In The Supreme Court of the United States.

THE STATE OF MINNESOTA,

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior,

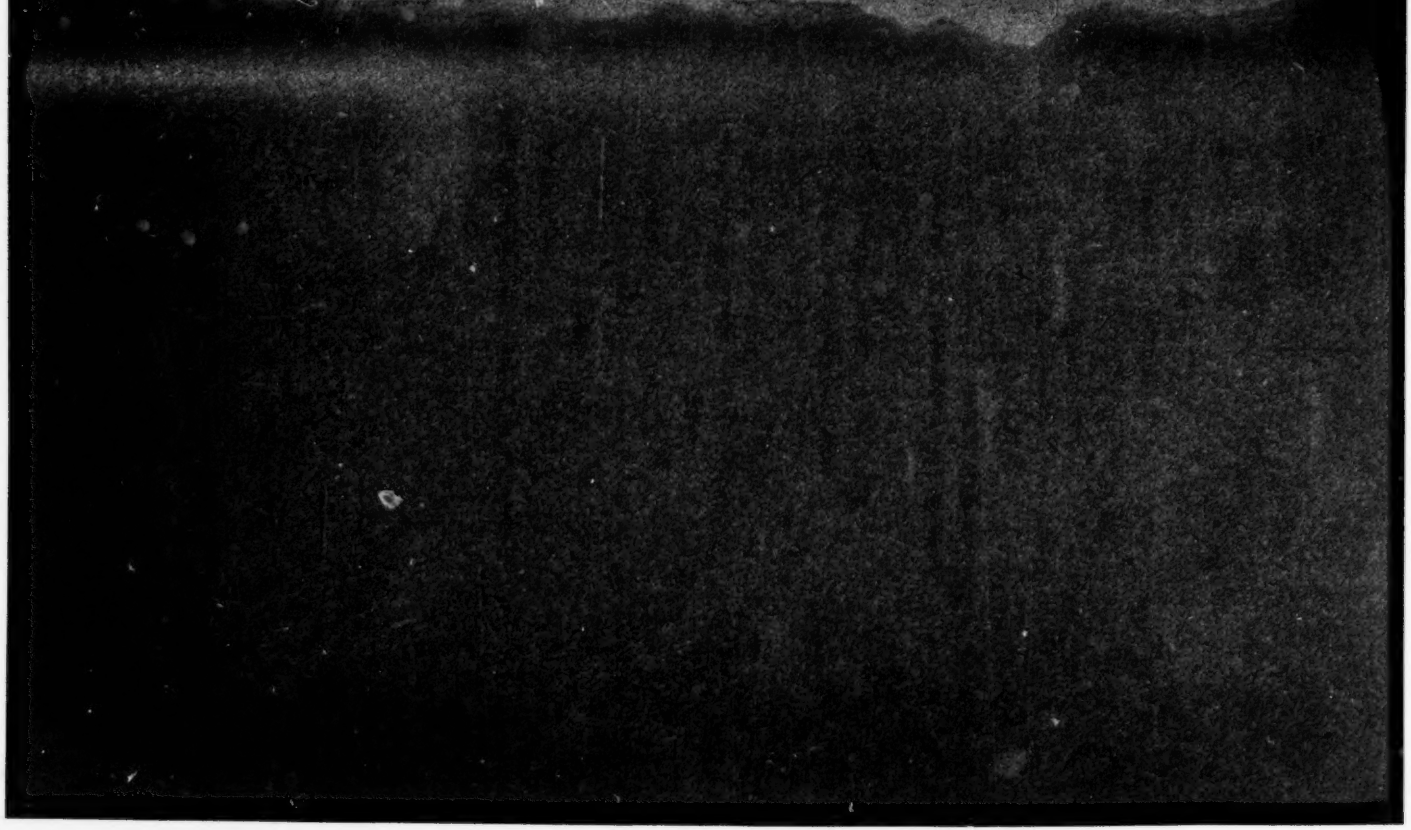
and

BINGER HERMANN, Commissioner of the General Land Office.

IN EQUITY.

Attorney General of the
State of Minnesota.

Solicitors and of Counsel for the Complainant.



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vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior,

and

BINGER HERMANN, Commissioner of the General Land Office.

IN EQUITY.

To the judges of the Supreme Court of the United States of America:

Your oratrix, the State of Minnesota, complainant, by Wallace B. Douglas, Attorney General of said State, brings this bill of complaint against Ethan Allen Hitchcock, Secretary of the Interior, who is a citizen of the State of Missouri, and Binger Hermann, Commissioner of the General Land Office, who is a citizen of the State of Oregon, and thereupon your oratrix complains and says: That by the organic act of Minnesota, entitled, "An act to establish the Territorial Government of Minnesota," approved March 3, 1849, it was, among other things, enacted by Section 18 thereof

"that when the lands in said territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, the Sections numbered 16 and 36 of each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory and in the State and Territories hereafter to be erected out of the same."

That, by the act authorizing the State Government of Minnesota, approved February 26, 1857, it was, among other things, enacted by Section 5 thereof, "That the following propositions be, and the same are hereby, offered to the State Convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States and the said State of Minnesota, to-wit: First. That Sections numbered 16 and 36 in every township of public lands in said State, and where either of said Sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto and as contiguous as may be shall be granted to said State for the use of schools."

That the people of said Territory, proceeding under said act of Congress authorizing the formation of a State government, adopted, on the 13th day of October, 1857, a Constitution in which, by Section 3 of Article 2 thereof, the foregoing proposition as to school lands was duly accepted in the following language:

"The propositions contained in the act of Con- 7
gress entitled, 'An act to authorize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission into the Union on equal footing with the original States,' are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents."

That by an act of Congress entitled, "An act for 8
the admission of Minnesota into the Union," approved May 11, 1858, the said State was admitted into the Union on an equal footing with the original states in all respects whatever. That by said act of Congress it was, among other things, recited and enacted as follows:

"Whereas, an act of Congress was passed February twenty-sixth, eighteen hundred and fifty-seven, entitled 'An act to authorize the people of the Territory of Minnesota to form a constitution and state government preparatory to their admission into the Union on an equal footing with the original States'; and, whereas, the people of said 9
Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose; therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Minnesota

shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever."

That by a Joint Resolution approved March 3, 1857, entitled, "A Resolution relative to Sections sixteen and thirty-six, in the Territories of Minnesota, Kansas and Nebraska," it was enacted:

"That where any settlements, by the erection of a dwelling house or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas and Nebraska, and in the States and Territories hereafter to be erected out of the same) before the said sections shall have been or shall be surveyed; or when such sections have been or may be selected or occupied as town sites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, or reserved for public uses before the survey, then other lands shall be selected by the proper authorities, in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled, 'An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.' And if such settler can bring himself, or herself, within the provisions of the act of fourth of September, eighteen hundred and forty-one, or the occupants of the town site be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes."

That by reason of the premises all sections num- 13
bered sixteen and thirty-six in every township of public lands in said State which had not been sold or otherwise disposed of prior to February 26, 1857, the date of the approval of the act of Congress authorizing the State government, were granted by the United States to, and inured to and became vested in, the State of Minnesota.

That, at the date of the admission of the State of Minnesota into the Union, the larger portion of the territory thereof, and including more than 20,000 square miles of the northwestern area of said State lying west of the Mississippi River, and 14
including the area and tracts here in controversy, were, and for a long time thereafter remained, unceded Indian lands, subject to the Indian title of occupancy.

That, by treaty between the United States and the Red Lake and Pembina bands of Chippewa Indians, concluded October 2, 1863, ratified by the Senate March 1, 1864, and proclaimed by the President of the United States May 5, 1864, the said bands of Indians thereby ceded, sold, and conveyed to the United States all their right, title and interest in and to all the lands then owned or claim- 15
ed by them in the State of Minnesota and in the Territory of Dakota, within the following described boundaries, to-wit:

"Beginning at the point where the international boundary between the United States and the British possessions intersects the shore of the Lake of the Woods; thence in a direct line southwestwardly to the head of Thief River; thence down the

main channel of said Thief River to its mouth on the Red Lake River; thence in a southeasterly direction, in a direct line towards the head of Wild Rice River, to the point where such line would intersect the northwestern boundary of a tract ceded to the United States by a treaty concluded at Washington on the twenty-second day of February, in the year eighteen hundred and fifty-five, with the Mississippi, Pillager, and Lake Winnebigoshish bands of Chippewa Indians; thence along the said boundary line of the said cession to the mouth of Wild Rice River; thence up the main channel of the Red River to the mouth of the Shayenne; thence up the main channel of the Shayenne River to Poplar Grove; thence in a direct line to the Place of Stumps, otherwise called Lake Chicot; thence in a direct line to the head of the main branch of Salt River; thence in a direct line due north to the point where such line would intersect the international boundary aforesaid; thence eastwardly along said boundary to the place of beginning."

That this cession did not include within the aforesaid boundaries a large tract of Indian territory in the said State of Minnesota which, for a long time thereafter, remained Indian country to which the Indian title had not been extinguished and which was subject to the Indian right of occupancy.

That the area of the tract not included in said cession was about 5,432 square miles and contained 3,494,482 acres of land, being 254½ townships more or less and containing more than 308½ sections numbered sixteen and thirty-six respectively, such sections amounting to 190,200 acres and more.

That the said territory which was not ceded by

said treaty never has been nor has any portion 19
thereof ever been an Indian reservation, nor have any of the said school lands therein situate, or any portion thereof, been settled upon by the erection of a dwelling house or the cultivation of any portion of the same, nor has any portion of the same been selected or occupied as townsites, nor has any portion thereof ever been reserved for public uses.

That by an act of Congress entitled, "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889, such proceedings were had; that 20
shortly thereafter, and prior to September 2, 1891, the Indian title to a great portion of the unceded territory hereinbefore described was duly ceded to the United States by an agreement with said Indians, and such title was entirely extinguished except as to 29½ townships therein situate, which were not included in said cession, the lands not embraced in such cession being those defined by the following boundaries:

"Commencing at the point on Thief River where the same crosses the line between Marshall and Polk counties; thence easterly to the most north- 21
westerly point of the upper Red Lake; thence easterly along the northerly shore of said upper Red Lake to a point due north of a point 1 mile east from the easterly end of the lower Red Lake; thence due south to the last named point; thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the lower Red Lake; thence south to a point from which a line extending west passes midway between what is called the 'big marsh' and the sugar

bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth Road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation as the same has heretofore existed; thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNalley & Co., of Chicago, Ill., (but all waterways within the reservation above described are to be free for commercial purposes to all citizens of the United States), for the purpose and upon the terms stated in said act, which said lands embraced within the foregoing boundaries have been reserved by the commissioners appointed under said act and as therein authorized for the purpose of making and filing the allotments therein provided for."

That the said statute of January 14, 1889, provided for the allotment of lands in severalty to the Indians within all the territory not ceded by the treaty of October 2nd, 1863, or by said agreement of July 8, 1889, in conformity with that certain act entitled, "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States in the Territories over the Indians, and for other purposes," approved February 8, 1887.

That it was, by said act of Congress of January 14, 1889, directed that as soon as the cession and relinquishment of the Indian title had been obtained and approved, the Commissioner of the General Land Office should cause the lands so

ceded to be surveyed in the manner provided by 25
law for the survey of public lands, and that as soon as practicable after such survey had been filed and approved, the Secretary of the Interior should appoint a sufficient number of competent and experienced examiners to go upon said lands thus surveyed, and personally make examination of the same by 40 acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing shall be termed "pine lands," and which examination was required to show with particularity the amount and quality 26
of pine timber standing or growing on any tract, estimated by feet, and such examination was required to be filed with the Commissioner of the General Land Office, who was directed to make a list of all such "pine lands," describing each 40 acre lot or tract, and opposite each description to place the actual cash value of the same, according to his best judgment and information, but which valuation should not be less than three dollars per thousand feet, board measure; such list to be approved, modified, or rejected by the Secretary of 27
the Interior, as he should deem proper.

It is further provided by said act of Congress that all lands acquired from said Indians on said territory other than "pine lands" are, for the purposes of such act, to be termed "agricultural lands."

By said act of Congress it is further provided that after such surveys have been made, approved

and proclaimed, the said "pine lands" shall be sold to the highest bidder for cash at the local land office of the district within which said lands are located, in 40 acre parcels, and that in no event shall any parcel be sold for less than its appraised value, and that the residue of said lands remaining unsold after said public offering shall thereafter be sold at private sale for cash at the appraised value thereof, upon application at the local land office.

It is further provided by said act of Congress that when any of the "agricultural lands" not allotted under such act shall be surveyed, that the same shall be disposed of by the United States to actual settlers only, under the provisions of the homestead laws, provided that each settler shall pay to the United States for the lands so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five annual payments, and to be entitled to a patent therefor at the expiration of five years.

It is further provided by said act of Congress that all money accruing from the disposal of all said lands in conformity with the provisions thereof shall, after deducting certain expenses of cession, relinquishment, removal, allotments, surveys, and appraisals, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota, as a permanent fund, to draw interest at the rate of five per centum per annum, payable annually, for a period of fifty years. That by an act of Congress entitled,

"An act to amend an act entitled 'An act for the 31
relief and civilization of the Chippewa Indians in
the State of Minnesota,'" approved February 26,
1896, it is provided that sections numbered sixteen
and thirty-six of each township so surveyed shall
not be sold until the claim of the State of Minne-
sota to said sections, as part of the school lands of
said State, shall be determined. That the succes-
sive Secretaries of the Interior and Commissioners
of the General Land Office, and the above named
defendants, Secretary and Commissioner respec-
tively, commencing shortly after the passage of
said act of Congress of January 14, 1889, and pro- 32
ceeding continuously thereunder and thereafter,
caused surveys to be made of all the territory so
ceded, and also of all the territory not ceded by the
agreement of July 8, 1889, a census of the Indians
to be taken as in said act provided, surveys and es-
timates of the "pine lands" to be made, and per-
formed and did various other acts required by said
statute preliminary to the disposition of said lands
and of the pine growing thereon, and of the said
"agricultural lands," and the successive Secretar-
ies and Commissioners, and the said defendants, re-
spectively Secretary and Commissioner particular- 33
ly, did proceed to sell considerable quantities of the
pine growing thereon, in both the ceded and unced-
ed portions of said territory,and on said sections 16
and 36 and that the said defendants, Secretary and
Commissioner respectively, threaten to and intend,
and they will unless restrained by the order and de-
cree of this court, dispose of all the said sections 16

34 and 36 and all the pine timber growing thereon within the territory so ceded and also in the portion unceded in the manner and for the purpose provided by said act of Congress, to the entire denial and exclusion of any right of the State of Minnesota to any of the said sections 16 and 36, or of said timber, within said area so ceded and unceded, and to the great damage to said State.

That all of said territory, both ceded and unceded, had been fully surveyed by the United States prior to the commencement of this action.

That the quantity of "pine lands" so sold
35 amount to 117,154.23 acres, for which the United States has received $710,496.50.

That the "agricultural lands" so sold amount to 1,523.94 acres, for which the United States has received $708.70.

That, proceeding under the provisions of that certain act of Congress approved June 7, 1897, the successive Secretaries of the Interior and Commissioners of the General Land Office, and particularly the defendants, acting as such officers adopted regulations for the logging of what is called "dead and down timber"
36 on the aforesaid ceded and unceded lands, and did authorize the Indians to fell, cut, remove, sell and otherwise dispose of large quantities of the "dead and down timber" thereon, which the said Indians, and many white persons who acted under their authority, proceeded to do, and have done continuously down to the present time, cutting, removing and selling large quantities of the said timber, so-called "dead and down," from many sections numbered sixteen and thirty-six.

That instead of cutting only "dead, and down timber" so-called, the Indians and such persons cutting under the authority aforesaid have wrongfully cut, removed and sold from said territory, and particularly from said school sections sixteen and thirty-six, many millions of feet of timber which is not "dead and down" in any sense, but which is, and was when so cut and removed, green and uninjured timber; that the amount of such timber so cut and removed is over fifty-five millions of feet, and at prices ranging from four dollars and twenty-five cents to five dollars per thousand feet, and the total amount realized therefrom is about $263,000, the great portion of which timber was cut from said school sections sixteen and thirty-six. That shortly after the passage of said act of Congress of January 14, 1889, and in due time and continuously thereafter, the State of Minnesota duly notified the Secretary of the Interior and the Commissioner of the General Land Office that it claimed title to each and every section 16 and 36 within said tract of territory so ceded and unceded, and said State has ever since continued to claim and assert its said title.

That as long ago as on or about September 7, 1891, upon claim duly made as aforesaid by your oratrix to the Commissioner of the General Land Office, said officer acknowledged and held said title or right to be in the State of Minnesota as to the said sections sixteen and thirty-six within this particular territory, whether ceded or unceded, and your oratrix for a long time believed that said

ruling settled the question in favor of the State of Minnesota, and would be adhered to.

That, after a considerable time, the question was again raised by the Department of the Interior, and, after a hearing before the Secretary thereof, that officer, the above named defendant, Ethan Allen Hitchcock, did, as such Secretary on or about the day of May, 1899, in a letter addressed to the Commissioner of the General Land Office, and signed by such Secretary, wholly deny the right or claim, or any right or claim of your oratrix in or to any of the said sections 16 and 36, in any portion of said territory whether ceded or unceded. That said defendants, such Secretary and Commissioner, as such officers, propose and threaten to, and will unless restrained by the order and decree of this honorable Court, proceed to dispose of all of said sections 16 and 36 within said territory whether ceded or unceded not heretofore disposed of, by sale to many purchasers, or by allotment to the Indians, or to permit the pine to be cut and removed therefrom, and that they will thereby deprive your oratrix of the possession and enjoyment of and of the title to said lands or pine timber, and threaten and propose to create thereby a fund in the Treasury of the United States to be administered for the sole benefit of the Chippewa Indians as provided by the act of Congress of January 14, 1889.

That by virtue of the premises a cloud has been cast upon the title of your oratrix to the said lands. That a very large portion, and the greater portion, of said sections 16 and 36, but what por-

tion your oratrix is unable to state more particu- 43
larly, is covered with pine timber in quantity exceeding one hundred millions of feet, and of a value of more than five dollars per thousand feet.

That the value of said "pine lands" consists almost entirely in their timber, and that when the pine is cut therefrom the land is of little value for agricultural or any other purposes.

That prior to the commencement of this action
Letters respectively as such Secretary & Commissioner
the above named defendants and their predecessors, Secretaries of the Interior and Commissioners of the General Land Office respectively, have, under the said act of Congress of January 14, 1889, 44
disposed of, and sold, a large quantity of lands comprised within said sections 16 and 36, or have permitted the timber to be cut therefrom but to what extent and in what quantity your oratrix is not informed and cannot state, and that the purchasers and those claiming under them have already cut all the pine from a great portion thereof, and threaten to so cut and remove the pine from the remainder of said tracts, and to commit other acts of waste on said lands, and that your oratrix, by the cutting of the pine which has already, as aforesaid, taken place, has been damaged in the 45
sum of more than five hundred thousand dollars, and will be greatly damaged hereafter by the aforesaid intended acts of waste.

That the said purchasers and those claiming under them (for many of the said purchasers have also disposed of large portions of the land so bought by them) are many in number, many of

46 them being non-residents of the State of Minnesota, and the names and places of residence of most of them are unknown to your oratrix, and cannot with any diligence be ascertained.

That the said defendants and their predecessors in office, such Secretaries and Commissioners respectively, acting as such officers, have also allotted to said Indians, and sold and the defendants intend and threaten to so allot and sell to many purchasers, many tracts of the school lands classified as "agricultural lands" in the act of Congress of January 14, 1899, but in what amounts and to what purchasers your
47 oratrix is not able to state; that many of said purchasers are non-residents of the State of Minnesota, whose names and places of residence cannot with any diligence be ascertained.

That, by virtue of the premises, your oratrix will be put to a great multiplicity of suits, irreparable damage and great expense, unless aided by the equitable jurisdiction and powers of this honorable Court, and that the aforesaid property, particularly the "pine lands" will be wasted by cutting of all the pine thereon and rendered valueless unless prevented by the order and decree of this
48 honorable Court.

That by the aforesaid acts of Congress and other acts *in pari materia* the said Chippewa Indians have been made and have become citizens and electors of the State of Minnesota, and that they and their children are entitled to participate in the school fund of such State.

That the permanent school fund of said State,

on the 11th day of July, 1898, was $11,822,145.58, 49
and is now greater than that sum.

That the same is invested in various interest bearing securities and the amount produced by such interest is distributed annually among the school districts of the State of Minnesota; that the amount so distributed in the year 1897 was $772,947.50 and that such amount increases every year.

That the unsold school lands of said State amount of 1,327,434 acres.

That the average value of sections 16 and 36 in the territory ceded as hereinbefore stated is more 50
than fifty dollars per acre.

That your oratrix has no adequate remedy by any action at law in the premises.

To the end, therefore, that the defendants, Ethan Allen Hitchcock, Secretary of the Interior, and Binger Hermann, Commissioner of the General Land Office, may, if they can, show cause why your oratrix should not have the relief herein prayed for, and that they may be compelled to answer all and singular the premises, and all matters and things herein stated as fully and particularly as if the same were here again repeated, 51
and they severally thereunto interrogated, and that the said defendants may answer without oath, their answer on oath being hereby expressly waived;

And that the said defendants may by the decree of this court be perpetually enjoined and restrained from selling or otherwise disposing of any

of the said sections 16 and 36 within said territory, or of any timber thereon and may also by such decree be required to admit and acknowledge the title of the State of Minnesota to such sections 16 and 36, and may also, pending this suit, be enjoined from selling or otherwise disposing or allotting of any such sections or of any timber thereon, and may, by the final decree of this court, be perpetually enjoined from selling or disposing of any of the same, that the title to said sections 16 and 36 may be quieted and decreed to be in your oratrix; that the defendants and each of them may be enjoined by the order of this honorable Court pending this suit from disposing of or alloting any of said lands or of any timber thereon, and that your oratrix may have such other or further relief as the nature of this case may require and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your oratrix the most gracious writ of subpoena, to be issued out of and under the seal of the said Court, to be directed to the said defendants, Ethan Allen Hitchcock, Secretary of the Interior, and Binger Hermann, Commissioner of the General Land Office, strictly commanding them, and each and every of them, under a certain penalty and on a certain day therein to be named, to be and appear

before said court, and to stand and abide by such order and decree as said court may make in the premises; and your oratrix will always pray, etc.

C. D. Davis
F. B. Kellogg
C. A. Severance
H. W. Childs
J. E. Byrnes
Counsel

W. B. Douglas
Attorney General of the
State of Minnesota.

Solicitors and of Counsel for the Complainant.

UNITED STATES OF AMERICA,

State of Minnesota,
District of Minnesota.

C. W. G. Nidden being duly sworn, on his oath says he has resided in St. Paul County of Ramsey in the State of Minnesota, for eleven years; that he is well acquainted with the facts and circumstances set forth in the

58 foregoing bill of complaint, and that he has read the same and knows the contents thereof, and that the same is true of his own knowledge. C. W. G. Wilder

Subscribed and sworn to before me this

day of August, 1899.

P. J. Healy
Notary Public
Ramsey County, Minn.

Seal

IN THE

Supreme Court of the United States

OCTOBER TERM, 1901.

STATE OF MINNESOTA.

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior, and BINGER HERMANN, Commissioner of the General Land Office.

BRIEF AND ARGUMENT FOR COMPLAINANT.

STATEMENT OF FACTS.

This is a suit in equity by the State of Minnesota to enjoin the Secretary of the Interior and the Land Commissioner from selling any part of Sections 16 and 36 of the lands formerly included in the unceded Indian country of the Chippewa Indians.

The State claims these lands as school lands. The Secretary of the Interior claims the right to sell them under the act of Congress of January 14, 1889 (25 Statutes, page 642).

The solution of this question depends upon the proper construction of the Acts of Congress accepted by the territory and State of Minnesota reserving Sections 16 and 36 in the territory of Minnesota for the purpose of being applied to schools in said territory and in the state of Minnesota.

By the organic act of Minnesota entitled "An act to establish the territorial government of Minnesota," approved March 3, 1849, (9 Stat. 403), it was, among other things, enacted by Section 18 thereof, "that when the lands in said territory shall be surveyed under the direction of the government of the United States preparatory to bringing the same into market, the sections numbered 16 and 36 of each township in said territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said territory and in the state and territories hereafter to be erected out of the same."

On February 26, 1857 (11 Stat. 166), an Act of Congress was approved authorizing the formation of a state government for Minnesota. Section 5 of the act, so far as applicable to this question, is as follows:

"And be it further enacted, That the following propositions be, and the same are hereby, offered to said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said state of Minnesota, to-wit:

"First, That sections numbered sixteen and thirty-six in every township of public lands in said state, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may

be, shall be granted to said state for the use of schools."

The people of said Territory, proceeding under said act of Congress, authorizing the formation of a State government, adopted, on the 13th day of October, 1857, a Constitution, in which, by Section 3 of Article 2 thereof, the foregoing proposition, as to school lands was duly accepted in the following language:

"The propositions contained in the act of Congress entitled 'An Act to authorize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission into the Union on equal footing with the United States,' are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents."

That by an act of Congress entitled, "An act for the admission of Minnesota into the Union," approved May 11, 1858 (11 Stat. 285), the said State was admitted into the Union on an equal footing with the original States in all respects whatever. That by said act of Congress it was, among other things, recited and enacted as follows:

"Whereas, an act of Congress was passed February twenty-sixth, eighteen hundred and fifty-seven, entitled 'An act to authorize the people of the Territory of Minnesota to form a constitution and state government preparatory to their admission into the Union on an equal footing with the original States;'

and, whereas, the people of said Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose; therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever."

On February 26, 1856 (Laws of Minn. for 1856, page 368), the legislature of the territory of Minnesota sent a memorial to Congress for the relief of settlers upon the school lands. It will be remembered that in the act creating the territory of Minnesota, Sections 16 and 36 were reserved for the purpose of being applied to the schools. This act was passed in 1849. Thereafter it was found when the surveys came to be made, that there were certain settlers upon portions of Sections 16 and 36, and town sites had been laid out under the act of Congress, and lots sold covering portions of these sections. Thereupon and on the 26th day of February, 1856, the territorial legislature sent a memorial to Congress, as follows:

"To the Honorable the Senate and House of Representatives of the United States in Congress Assembled: The Memorial of the Legislative Assembly of the Territory of Minnesota respectfully represents:

"That under the provisions of the act of Congress, extending the provisions of the preëmption law of

1841, over the unsurveyed lands of Minnesota, many of our settlers have heavy investments, both of money and labor, in the opening of farms, erection of buildings, and the laying out and improving of town sites (lots in which said town sites were frequently transferred before the Government survey, at high prices, to the occupants thereof), who were found when the Government survey was made, to be upon the school sections, and that the said settler had no means of ascertaining previous to the survey, where the school sections would come.

"That it is a great injustice and hardship to compel such persons to re-purchase or lose entirely the improvements and homes, made by themselves in good faith, in the expectation of preëmpting or entering them according to the provisions of the statute. Therefore, your Memorialists would respectfully request your Honorable Body to pass an act, giving such persons in this Territory as have, previously to the Government survey, settled upon the school sections (and have otherwise the right of preëemption), the right to preëmpt the same, as other Government lands are preëmpted. And also providing for the entry of the town sites in this Territory, which are on school sections and were occupied as such, previous to the Government survey, as other town sites upon unoffered Government lands are entered.

"And also allowing the County Commissioners of the county in which such lands may be situate, to enter in lieu thereof, for the benefit of the school fund of the township in which such land so as aforesaid settled or occupied may be, and without charge, an equal amount of such surveyed lands, subject either to private entry or preëmption, in the same Land District as they may select.

"And as in duty bound your Memorialists will ever pray."

It will be noted that this Memorial refers only to land disposed of to settlers and under the town site act, and asks that the county commissioners be authorized to select lands in lieu of such land. Thereupon Congress passed a joint resolution approved

March 3, 1857 (11 Stat. 254), entitled, "A resolution relative to Sections 16 and 36 in the Territories of Minnesota, Kansas and Nebraska," by which it was enacted:

"That where any settlements, by the erection of a dwelling house or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas and Nebraska, and in the States and Territories hereafter to be erected out of the same) before the said sections shall have been or shall be surveyed; or when such sections have been or may be selected or occupied as town sites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, or reserved for public uses before the survey, then other lands shall be selected by the proper authorities, in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled, 'An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.' And if such settler can bring himself, or herself, within the provisions of the act of fourth of September, eighteen hundred and forty-one, or the occupants of the town site be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes."

At the time of the admission of the state of Minnesota into the Union approximately one-fourth of the total area thereof was unceded Indian land subject to the original right of occupation by the Indians, and at the date of the act of Congress establishing a

territorial government for Minnesota, to-wit, March 3, 1849, the larger part of the state was unceded Indian land. Much of the territory was ceded in 1854 and 1855. We submit herewith a map showing the different sessions after the act creating a territorial government and down to the present time.

It is stipulated in this case (Stipulation 3rd Subdivision):

"That except as its status may have been affected or changed by the treaty of October 2, 1863, (13 Stat., 667), by the President's order of March 18, 1879, enlarging what was then known as the White Earth Indian Reservation, by the act of Congress of June 2, 1890 (26 Stat., 126), or by one or more of these, the district or country embracing the lands in controversy continued to be unceded Indian lands subject to the original right of occupany of the Chippewa Indians up to the time of the action had on March 4, 1890, under the said act of January 14, 1889."

We shall show hereafter that none of the acts in the stipulation referred to made this an Indian reservation. The country referred to remained unceded Indian territory. The country east and south was ceded by the Indians by treaty on February 22, 1855, by metes and bounds (10 Statutes, 1165), and on the west by treaty of October 2, 1863 (13 Statutes, 67). This left the territory in question in this suit unceded Indian lands occupied by small bands of Indians. It is admitted that no part of Sections 16 and 36 embraced within this territory has been allotted to any Indian or entered, sold or disposed of as agricultural land or pine land or otherwise (Answer page 13), and that no settlement has been made upon any part of

Sections 16 or 36 in said country, by the erection of a dwelling house or the cultivation of any portion thereof, and that no part of either of said sections has been selected or occupied as a town site. Answer page 8.

But it is claimed that Sections 16 and 36 were "reserved for public uses," and the facts on which this claim is made are as follows:

On January 14, 1889, Congress passed an act (25 Statutes, 642) for the relief and civilization of the Chippewa Indians. In substance it provided as follows:

Section 1 authorized the president to appoint commissioners to obtain from the Indians a cession and relinquishment of these lands, except so much thereof as might be set aside to fill allotments to Indians in severalty; and provided for the taking of the census of the Indians.

Section 3 provided for setting aside a certain part of this territory for allotments in severalty.

Section 4 provided for a survey of the lands, for the appointment by the Secretary of the Interior of examiners to examine the pine lands, and for appraisal of the same.

Section 5 provided for advertisement and auction sale of the pine lands.

Section 6 for a sale of the agricultural lands to settlers under the homestead laws.

Section 7 provided that the funds, after deducting the expenses, should be deposited in the treasury of

the United States to the credit of the Chippewa Indians, and provided for the distribution thereof.

No mention is made in this act of Sections 16 and 36, but there is nothing in the act to indicate that Congress intended to sell Sections 16 and 36.

The census was taken showing the total number of Indians on all of the Indian lands in the state to be 8,304, male, female, adults and minors. Rep. Chippewa Ind. Com. Executive Document, No. 247, pg. 9, 51, 51st S. The total number of Indians on the unceded land in question in this case is 1,168. Report of Chippewa Indian Commission, page 3.

On March 4, 1890, President Harrison approved the treaty ceding these lands to the government under the act of 1889. Report Chip. Ind. Com. pg. 27 to 32.

In said treaty among other things it was provided for the setting aside of a part of said territory for separate allotments. This territory is described in the last article of the treaty, page 28, and is known as the "Diminished Reservation," shown on the map as the Red Lake Indian Reservation. The treaty is attached hereto as Appendix A.

Immediately after the passage of the act of Congress of January 14, 1889, the state of Minnesota notified the Secretary of the Interior and the Commissioner of the General Land Office that it claimed title to each of Sections 16 and 36 in the lands ceded under the said treaty, and has ever since continued to assert such claim.

Admission in answer, page 12.

Senator Cushman K. Davis on March 2, 1891, addressed a letter to the Hon. Thomas H. Carter, then Commissioner of General Land Office, setting forth the claim of the State to these lands, and another letter on Sept. 3, Stipulation pages 2 to 4. The Commissioner of the General Land Office answering the communication of Senator Davis decided that the State was entitled to the lands. Stipulation pages 5 to 8.

Subsequently Congress passed an act entitled "An act to amend an act entitled 'An act for the relief and civilization of the Chippewa Indians in the state of Minnesota," approved February 26, 1896 (29 Stat. 17), in which, among other things, it was enacted:

"That Sections numbered 16 and 36 in each township so surveyed shall not be sold until the claim of the state of Minnesota to the ownership of said sections as part of the school lands of said state shall have been determined."

But the defendants claim that the present Secretary of the Interior has determined the ownership of said Sections 16 and 36 by his decision of May 9, 1899, 28 Land Decisions, 374. Answer pg. 11.

At the time of the filing of the bill a large portion of the lands had been surveyed; all have since been surveyed, and it is stipulated that this suit may be heard and determined in like manner and with like effect as though the lands had all been surveyed at the time of the filing of the bill. Stipulation, paragraph 2.

The total amount of lands in the territory thus ceded by the Indians is about 3,546,356 acres, in which Sections 16 and 36 would amount to 197,120 acres, but there was set apart for separate allotment what is known as the "Diminished Reservation," described on page 9 of the answer, and containing 663,954.22 acres, in which there are approximately 36,000 acres in Sections 16 and 36, so that this dispute involves:

First, about 160,000 acres, being Sections 16 and 36 in the lands ceded to the government by the treaty, Appendix A hereto attached, outside of the lands set aside for separate allotment.

And second, Sections 16 and 36, in the territory, which was set aside for separate allotment to the Indians.

It is stipulated by the 6th Sub-division of the Stipulation, as follows:

"Sixth. That upon the hearing of this cause either party shall be at liberty to refer to and read from any Indian treaty, any act or resolution of Congress or of the Territory or State of Minnesota, whether private or public, any publication made under the authority of Congress or either house thereof, or of any executive department or bureau therein, including the pamphlet known as 'Executive Orders relating to Indian Reserves,' so far as the same may be relevant or material to this suit, or a proper matter for the court to consider in any aspect of this cause; and any such matter may be so referred to or read from with like effect as if it were herein fully set forth."

From the foregoing state of facts we deduce the following proposition:

I.

THE TERRITORY IN QUESTION WAS NOT AN INDIAN RESERVATION, BUT WAS WHAT IS KNOWN AS UNCEDED INDIAN COUNTRY SUBJECT TO THE ORIGINAL RIGHT OF OCCUPANCY BY THE CHIPPEWA INDIANS.

II.

WHETHER THE COUNTRY WAS AN INDIAN RESERVATION OR UNCEDED INDIAN COUNTRY, IT WAS SUBJECT TO THE GRANT TO THE STATE WHEN THE INDIAN RIGHT OF OCCUPANCY WAS EXTINGUISHED.

ARGUMENT.

I.

THE TERRITORY IN QUESTION WAS NOT AN INDIAN RESERVATION, BUT WAS WHAT IS KNOWN AS UNCEDED INDIAN COUNTRY SUBJECT TO THE ORIGINAL RIGHT OF OCCUPANCY BY THE CHIPPEWA INDIANS.

It is stipulated between the parties, third subdivision of the stipulation, as follows:

"That except as its status may have been affected or changed by the treaty of October 2, 1863 (13 Stat. 667), by the President's order of March 18, 1879, enlarging what was then known as the White Earth Indian Reservation, by the act of Congress of January 14, 1889 (25 Stat. 642), or by the act of Congress of June 2, 1890 (26 Stat. 126), or by one or more of these, the district or country embracing the lands in controversy continued to be unceded Indian lands subject

to the original right of occupancy of the Chippewa Indians up to the time of the action had on March 4, 1890, under the said act of January 14, 1889."

All of the state of Minnesota, and in fact, all of the Northwest country was at one time Indian country or unceded Indian lands inhabited by various bands of Indian tribes. In 1834 Congress passed an act, 4 Statutes, 729, for the purposes of which Indian country was defined therein as follows:

"All that part of the United States west of the Mississippi River and not within the states of Missouri and Louisiana or the territory of Arkansas; and also that part of the United States east of the Mississippi River and not within any state to which the Indian title has not been extinguished, for the purposes of this act be taken and deemed to be Indian country."

It does not need a statute to define Indian country. The court will take judicial knowledge of the fact that except as the same has been specially reserved by treaty stipulations, or by statutes, or executive orders by authority of statutes, the entire northwesterly country, including Minnesota, was unceded Indian country subject to the original right of occupancy of the Indians, the fee of which was in the government.

It is stipulated in this case that such was the condition of the land in question up to the date of the ratification of the treaty with the Chippewa Indians on March 4, 1890, unless its status was changed by the treaty, executive order, or statutes referred to in the stipulation. That none of these changed the status of this country is evident from even a casual inspection of them.

Referring to the treaty of October 2, 1863 (13 Stat. 667) it will be found that by this treaty the Chippewa Indians ceded to the government their rights of occupancy to the most northwesterly portion of the state of Minnesota lying west and southwest of the land in question, and designated on the map herewith furnished, for which the government agreed to pay certain sums.

By the 9th article 640 acres on the north side of Pembina River was set aside for the chiefs "Moose Dung" and "Red Bear." This is the only reservation referred to in the treaty. It simply ceded a portion of the previously unceded country, leaving intact that portion of the country ceded by the treaty of March 4, 1890.

It is next claimed that the President's order of March 18, 1879, enlarging what was then known as the White Earth Indian Reservation, changed the status of this country from unceded Indian country to an Indian reservation. This executive order added certain lands to the White Earth Reservation. The White Earth Reservation is situated to the south of this unceded country, and is no part of it. In the description of the lands added to the White Earth Reservation the northern boundary is described as the southern boundary of the Red Lake Indian Reservation. The executive order will be found hereto attached as Appendix B. It simply extended the northern boundary of the White Earth Reservation to the southern boundary of this unceded country, and

called it in this order the "Red Lake Indian Reservation."

The executive order had no reference to the country is question, and only by way of description was it mentioned. This order was afterwards revoked by the President, and the White Earth Indian Reservation reduced to the extent in which it existed at the time of the session of March 4, 1890.

The only other act we desire to call to the court's attention is the act of June 2, 1890 (26 Stat. 126), which granted the Duluth & Winnipeg Railroad a right to extend its railroad through the Winnipigoshis, Cass Lake, White Oak Point and Red Lake Indian Reservations in the state of Minnesota. This language is simply used to designate the country. Neither one of the acts or orders to which we have referred in the slightest degree changed the status or condition of this country or the rights of the Indians therein.

Forty-three Cases Brandy, 11 Fed. Rep. pg. 47;

Same case, 14 Fed. pg. 539;

United States v. Leathers, 6 Saw. 17;

United States v. Payne, 8 Fed. 383.

Judge McCrary in the first case, reported in 14 Federal, said:

"An Indian reservation is a part of the public domain set apart by proper authority for the use and occupation of a tribe or tribes of Indians. It may be set apart by an act of Congress, by treaty, or by executive order; I do not think an Indian reservation can be established by custom or prescription. The fact that a particular tribe or band of Indians have

for a long time occupied a particular tract of country does not constitute such tracts an Indian reservation. Originally, all of the public domain was occupied by the Indians, and the reservation policy was adopted with a view of locating them in certain districts, and opening the remainder of the public land for white settlement. It cannot, therefore, be said that a particular part of the public domain, upon which an Indian tribe has been suffered long to remain, while other portions have been open to settlement, or set apart specifically for Indian occupancy, constitutes such tract an Indian reservation. It simply retains the character it had at the beginning, and can only be correctly designated as a tract of public land to which the Indian title has not been extinguished. * * * The fact that the tract of country in question has been sometimes referred to in treaties and official reports as the 'Red Lake Indian Reservation,' is not sufficient to authorize the court in a quasi criminal case, to declare it such."

It seems clear that the status of this country was never changed from this original condition. The boundaries were arrived at by fixing the boundaries of the territory from time to time ceded by different treaties. The country on the east was ceded by the treaty of 1855, (10 Stat. at Large, 1165); the country on the west by the treaty of October 2, 1863, (13 Stat. 667), simply leaving the territory in question unceded Indian country in the same condition as it had always been.

The other statute referred to in the stipulation is the statute of January 14, 1889, (25 Stat. 642) which provided for the cession of these lands to the government, and for a sale thereof to settlers and others, as heretofore recited. It will not be necessary to refer to the provisions of this statute under this head

of our brief. It will be fully considered under the next sub-division.

The fee to public lands occupied by Indian tribes, whether the status be that of an Indian Reservation created by law, or a treaty, or merely Indian country, is in the United States, and passes by grant subject to the Indian right of occupancy, and no patent is necessary.

This doctrine is firmly established.

Cherokee Nation v. Georgia, 5 Pet. 48.

Beecher v. Wetherby, 95 U. S. 517.

Heydenfeldt v. Daney Gold Co., 93 U. S. 634.

Buttz v N. P. R. R. Co., 119 U. S. 55.

Clark v. Smith, 13 Pet. 195. (22:211)

U. S. v. Cook, 19 Wall. 591.

St. Paul, M. & M. R. Co. v. Phelps, 137 U. S. 528.

Gaines v. Nicholson, 9 How. 355.

The rights of the State were merely in abeyance or suspension during the period of Indian occupancy, and vested *eo instanti* upon the extinction of the Indian right of occupancy and identification by public survey. The only qualification to this is when there has been an appropriation of a section, prior to survey, for any public purpose contemplated by the compact between the United States and the State.

This is clearly stated in

Buttz v. N. P. R. R. Co., 119 U. S. 55.

"The land in controversy and other lands in Dakota, through which the Northern Pacific Railway was to be constructed, was within what is known as Indian country. At the time the act of July 2, 1864, was

passed, the title of the Indian tribes was not extinguished. But that fact did not prevent the grant of Congress from operating to pass the fee of the land to the Company. The fee was in the United States. The Indians had merely a right of occupancy, a right to use the land subject to the dominion and control of the Government. The grant conveyed the fee subject to this right of occupancy. The railroad company took the property with this incumbrance. The right of the Indians, it is true, could not be interfered with or determined except by the United States. No private individual could invade it, and the manner, time, and conditions of its extinguishment were matters solely for the consideration of the government, and are not open to contestation in the judicial tribunals. As we said in Beecher v. Wetherby, 95 U. S. 517 (Bk. 27. L. ed. 440): "It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and it is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians. The right of the United States to dispose of the fee of land occupied by them has always been recognized by this court from the foundation of the government.' In support of this doctrine several authorities were cited in that case."

And in Gaines v. Nicholson, where it is said:

"The state of Mississippi acquired a right to every sixteenth section, by virtue of these acts, on the extinguishment of the Indian right of occupancy, the title to which, in respect to the particular sections, became vested, if vested at all, as soon as the surveys were made and the sections designated. No patent was necessary, or is ever issued, for these school sections."

II.

WHETHER THE COUNTRY WAS AN INDIAN RESERVATION OR UNCEDED INDIAN COUNTRY, IT WAS SUBJECT TO THE GRANT TO THE STATE WHEN THE INDIAN RIGHT OF OCCUPANCY WAS EXTINGUISHED.

But whether we are correct in our first proposition or not, whether the country was an Indian reservation or unceded Indian Country; when the Indian's right of occupancy was extinguished, under the authority of the act of 1889, and the land surveyed and offered for sale, the right of the state to Sections 16 and 36 immediately attached.

It is not claimed that any part of this country outside of the Diminished Reservation has been allotted in severalty or is to be so allotted, or that any settlements by the erection of dwelling house or the cultivation of any portion thereof has been made or selected, or occupied as town sites, but it is claimed that the entire country was by the act of 1889 "reserved for public uses," and therefore the right of the state does not attach. This is the pivotal question in this case.

THEREFORE THE QUESTION IS, WHEN THESE LANDS WERE SURVEYED WERE THEY BY THE ACT OF 1889 "RESERVED FOR PUBLIC USES" WITHIN THE MEANING OF THE JOINT RESOLUTION OF CONGRESS?

It will not be claimed that the act of 1889 specifically reserved Sections 16 and 36 for public uses or

that it specifically provided that these sections should be sold and the state deprived of them, but because the act of 1889 does not mention sections 16 and 36, and provides for a sale of the lands of the Red Lake Indian Reservation and all other reservations, that by inference Congress intended to deprive the state of Sections 16 and 36 in this enormous territory. Was such the intention of Congress? Being a question of the construction of this statute it is our claim that the court should give a most liberal construction in favor of continuing the time-honored policy of devoting Sections 16 and 36 in each state and territory to maintaining the public schools, and in favor of fulfilling the pledges of Congress to the territory and state of Minnesota. If these laws are reasonably consistent with such a construction, it should be given them.

The appropriation of the public lands for the encouragement of education is a cherished policy of the national government, initiated before the adoption of the present constitution of the United States.

By an ordinance the Confederate Congress in 1785 inaugurated the practice of setting apart Section No. 16 of each township of public lands for the maintenance of schools.

Again by the ordinance of 1787 for the government of the northwest territory, article 3, it was provided that, "religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

This policy thus inaugurated was continued in the laws organizing each of the states in the northwest, commencing with Ohio, and has been incorporated in the constitution of those states to the present time. It is needless to say that this policy has been of great value in the growth and development of the West. Speaking of this policy, Mr. Justice Campbell in the case of Cooper v. Roberts, 18 How. 178 of the Opinion, said:

"But the constancy with which the United States have adhered to the policy in the various compacts with the people of the newly-formed States, and the care which congress has manifested to prevent the accumulation of prior obligations which might interrupt it, fully display their estimate of its value and importance. There is, obviously, a definite purpose declared to consecrate the same central section of every township of every State which might be added to the federal system, to the promotion 'of good government and the happiness of mankind,' by the spread of 'religion, morality, and knowledge,' and thus, by a uniformity of local association, to plant in the heart of every community the same sentiments of grateful reverence for the wisdom, forecast, and magnanimous statesmanship of those who framed the institutions for these new States, before the constitution for the old had yet been modeled."

Bearing in mind therefore that liberal construction that should be given to these laws to carry out the policy of education which has been of inestimable value and will be of great value to all generations to come, let us look at the statutes of Congress, the constitution of the state, and the resolution of Congress and see whether it was the intention that the state should receive Sections 16 and 36 in the unceded

Indian country and Indian reservations when the Indian right of occupancy should be extinguished. The act of Congress of March 3, 1849, creating a territorial government provided, "that when the lands in said territory shall be surveyed under the direction of the government of the United States preparatory to bringing the same into market the Sections 16 and 36 of each township in said territory *shall be, and the same are hereby reserved* for the purpose of being applied to schools in said territory, and in the state and territories hereafter to be erected out of the same."

Here was a pledge given to the people who were to inhabit what was at that time an unknown region scarcely upon the borders of civilization, peopled by roving bands of Indians. Clearly it was not the intention that the occupancy of this country by the Indians should prevent the state from receiving the school sections when the rights of the Indians should be extinguished by cession to the United States. Such a construction would have made this pledge of little value. It had been the experience in Ohio, Indiana, Michigan, Illinois and Wisconsin, that as rapidly as the country was settled the Indian title became extinguished, and this act of Congress was undoubtedly passed with the intention that as fast as the Indian rights were ceded and the lands surveyed, the state's rights should immediately attach. Such had been the holding of the courts as to Michigan and Wisconsin. Some of these cases were decided prior to the

time of the admission of Minnesota into the Union. In the light of these decisions and in the light of the experience of Congress, it must be presumed that it was intended that the gift of Sections 16 and 36 should apply to unceded Indian country and Indian reservations. When Congress passed the act enabling the people of a territory to form a state government, it renewed this pledge which was accepted by the state in its constitution of 1858. At that time approximately one-fourth of the state was still unceded Indian country, and there is nothing to indicate that Congress intended to except Indian reservations or unceded Indian country from the application of this grant. Had such been the intention appropriate words of exclusion would have been used. The language, however, would indicate the contrary intention. The proposition contained in the enabling act was "that Sections No. 16 and 36 in every township of public lands in said state, and, where either of said sections or any part thereof *has been sold or otherwise been disposed of*, other lands equivalent thereto and as contiguous as may be, shall be granted to said state for the use of schools."

Certainly, reserving land for reservations was not a sale or disposal of them within the meaning of this congressional act.

Referring now to the joint resolution of March 3, 1857, it is our opinion that this is not intended to enlarge the exceptions, but to specify them more particularly.

Referring to the memorial of the state legislature it will be noticed that the state calls the attention of Congress to the fact that when the government surveys were made it was found that settlers had investments of both money and labor in opening up farms upon parts of the school land, and that certain town sites had been platted under the congressional act of 1844, and prayed that lands be granted to the state in lieu of these lands occupied by settlers and town sites. Congress thereupon passed the resolution providing what settlement, improvement and cultivation should be sufficient to take the land out of the grant to the state, and also provided that when such sections had been selected or occupied for town sites under the congressional act of 1844 "*or reserved for public uses*" before the survey, then the authorities may select lands in lieu thereof agreeably to the provisions of the act of Congress of 1826.

It is a settled doctrine of this court that when a grant is made to a state for the use of its schools of certain sections of land out of the public domain, the grant as to such sections falling within Indian reservations or territory to which the Indian right of occupancy has not been extinguished, is in suspension only during the period of such occupancy.

Beecher v. Wetherby, 95 U. S. 517;

Cooper v. Roberts, 18 How. 173;

United States v. Thomas, 151 U. S. 577;

Buttz v. N. P. R'y, 119 U. S. 55;

Natoma Water & Mining Co. v. Bugby, 96 U. S. 165.

The case of Beecher v. Wetherby, 95 U. S. 517, is identical with the case at bar. In that case the act enabling the people of Wisconsin Territory to form a constitution and government, approved August 6, 1846, provided that "Section 16 in every township of the public lands in said state, and where such section *has been sold or otherwise disposed of* other lands equivalent thereto and as contiguous as may be shall be granted to said state for the use of schools." It will be seen that this is a literal copy of the enabling act of Minnesota. By a treaty of August 9, 1825, 7 Stat. 272, the Menomonee lands were declared "bounded on the north by the Chippewa country, on the east by Green Bay and Lake Michigan extending as far south as Milwaukee River, and on the west they claim to Black River."

The lands in question were within this district.

A further treaty concluded with the Menomonees February 8, 1831 (7 Stat. 342), confirming those boundaries, was ratified by the senate with a proviso that two townships on the east side of Winnebago Lake should be set aside for the use of the Stockbridge and Munsee Indians. This remained an Indian reservation until February 6, 1871, when Congress by a statute (16 Stat. 404), entitled "An act for the relief of the Stockbridge and Munsee tribes of Indians in the State of Wisconsin," provided for the sale of these two townships. The act is very like the act of 1889 providing for a sale of the unceded lands of the Chippewas. Section 1 provided that the two townships

should be examined and appraised by two or more disinterested appraisers to be selected by the Secretary of the Interior. Their appraisal should state the quality of the soil, the quantity and value of the timber growing on each lot, estimating the pine at not less than one dollar per thousand, the value of all improvements, etc.

It was then provided for advertising the lands and selling them, and after paying the cost of the appraisement and other expenses the portion of the proceeds belonging to the citizens was to be distributed, and that belonging to the Indian tribe to be deposited in the United States treasury, drawing five per cent, and to be used for the benefit of the Indians.

No mention is made in this act of Section 16, *and yet the court held that this act would be construed to apply only to those portions of the townships which were outside of Section* 16. *The court said:*

"The act of Congress of Feb. 6, 1871, authorizing a sale of the townships occupied by the Stockbridge and Munsee tribes, must, therefore, be held to apply only to those portions which were outside of section 16. It will not be supposed that Congress intended to authorize a sale of land which it had previously disposed of. The appropriation of the sections to the State, as already stated, set them apart from the mass of public property which could be subjected to sale by its direction."

It will be noted that long before this enabling act of Congress granting or pledging Section 16 to the state of Wisconsin, was enacted or accepted by the state, these two townships were set apart as an In-

dian reservation for the Stockbridge and Munsee tribes. At the time the surveys were made they were occupied by these Indians, and the act of 1871 providing for the sale, disposition and division of the proceeds, made no mention or reserve of Section 16 to the state of Wisconsin; and yet the court said that it will not be presumed that Congress intended to authorize a sale of land which had been previously disposed of. We say in this case that it will not be presumed that by the act of 1889 providing for the disposition of these lands Congress intended to sell and dispose of land which it had irrevocably pledged to the state. We shall hereafter refer to the meaning of the phrase, "lands reserved for public uses." Suffice it here to say that there are many public uses, such as military reservations, public buildings, light-houses, etc., to which small tracts of the land might be put, consistent with the meaning of this section. It can hardly be supposed that Congress intended by this act to deprive the state of an enormous tract of land or of all the land in the Indian country or Indian reservations. Referring to this subject of the Indian reservations, Mr. Justice Field in the last case cited, said:

"It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section sixteen (16) in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and consti-

tuting only a pledge of a grant *in futuro*, or as operating to transfer the title to the State upon her acceptance of the propositions as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially excepted." * * *

"The plaintiff contends that there had been a prior reservation of the land to the use of the Menomonee tribe of Indians.

"It is true that, for many years before Wisconsin became a State, that tribe occupied various portions of her territory, and roamed over nearly the whole of it. In 1825, the United States undertook to settle by treaty the boundaries of lands claimed by different tribes of Indians, as between themselves, and agreed to recognize the boundaries thus established, the tribes acknowledging the general controlling power of the United States, and disclaiming all dependence upon and connection with any other power. The land thus recognized as belonging to the Menomonee tribe embraced the section in controversy in this case. Subsequently, in 1831, the same boundaries were again recognized. But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians. The right of the United States to dispose of the fee of lands occupied by them has always been recognized

by this court from the foundation of the government. It was so ruled in Johnson v. McIntosh, 8 Wheat. 543, in 1823; and in United States v. Cook, 19 Wall. 591, in 1873. Other cases between those periods have affirmed the same doctrine. Clark v. Smith, 13 Pet. 195. See also Jackson v. Hudson, 3 Johns. (N. Y.) 375; Veeder et al. v. Guppy, 3 Wis. 502; and 8 Opin. Atty. Gen., pp. 262-264." * * *

"In the construction of grants supposed to embrace lands in the occupation of Indians, questions have arisen whether Congress intended to transfer the fee, or otherwise; but the power of the United States to make such transfer has in no instance been denied. In the present case, there can hardly be a doubt that Congress intended to vest in the state the fee to section 16 in every township, subject, it is true, as in all other cases of grants of public lands, to the existing occupancy of the Indians so long as that occupancy should continue. The greater part of the State was, at the date of the compact, occupied by different tribes, and the grant of sections in other portions would have been comparatively of little value. Congress undoubtedly expected that at no distant day the State would be settled by white people, and the semi-barbarous condition of the Indian tribes would give place to the higher civilization of our race; and it contemplated by its benefactions to carry out in that State, as in other States, 'its ancient and honored policy' of devoting the central section in every township for the education of the people."

We have quoted at length from this decision because the argument is so applicable to the case at bar. It is there said that these lands (section 16) were withdrawn from any other disposition and set apart from the public domain so that no subsequent sale of them *could be construed* to embrace them, although they were not specially excepted. Mark this language. Although the lands were not specially excepted from the act of 1889, the law would be con-

strued so as not to include them. It was contended in this case also that the lands were reserved by prior reservation for the Indian tribes. The court said that the greater part of the state was occupied by Indian tribes at the time of the admission of the state into the Union. This is equally true of Minnesota, and it is perfectly evident that Congress did not intend that the fact that the land was reserved for Indian tribes, should deprive the state of the lands when the Indian title should be changed or extinguished.

It will be noted that the court cites and approves the case of Cooper v. Roberts, 18 How. 173, one of the earliest cases arising under this school land dedication. The grant to the state of Michigan by Congress was substantially the same as that to the state of Wisconsin. It was as follows: "That the section number sixteen (16) in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools."

The plaintiff procured a patent for these school lands from the state in 1851. It appears that in 1845 the Secretary of War executed a mining lease of these lands. This lease came to the Michigan Mining Company in 1847, and from thence until 1851 it held possession of the lands. In 1850 the company applied for a patent to the land office. In 1852 the entry of the company was allowed, but with a reser-

vation of whatever rights the state of Michigan might have. The land was surveyed in 1847. The question was whether the state of Michigan was entitled to the land or the Mining Company; whether the land had been *"previously sold, granted or disposed of"* so as to take it out of the claim of the state of Michigan. The court held that it had not. The mining lease was given in 1845. In 1847 Congress passed an act (9 Statutes 146), by section 2 of which it was provided as follows:

"Sec. 2. And be it further enacted, That the Secretary of the Treasury shall cause a geological examination and survey of the lands embraced in said district to be made and reported to the Commissioner of the General Land Office. And the President is hereby authorized to cause such of said lands as may contain copper, lead, or other valuable ores, to be exposed to sale, giving six months' notice of the times and places of sales in such newspapers of general circulation, in the several States, as he may deem expedient, with a brief description of the lands to be offered; showing the number and localities of the mines known, the probability of discovering others, the quality of the ores, the facilities of working the mines, and the means and expense of transporting their products to the principal markets in the United States. And all the lands embraced in said district, not reported as aforesaid, shall be sold in the same manner as other lands under the laws now in force for the sale of public lands, excepting and reserving from such sales section sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses."

It will be noticed that the President was authorized to sell all lands containing copper, lead or other valuable ores, and all the lands embraced within said district not reported to contain copper, lead or other

valuable ores, should be sold in the same manner as other lands under the laws then in force excepting and reserving from such sales Section 16 in each township for the use of schools, etc.

It was claimed that by this act mineral lands were ordered to be sold, and therefore came within the exception in the grant to the state of Michigan as to lands "sold, granted or disposed of." But the court declined to follow this construction, and said:

"It has been argued, that this exception is only applicable to the lands not contained in the geological report and that the mineral lands 'were appropriated and disposed of without reference to the school reservation of this section of the act.' But it does no violence to the language to embrace within the exception all the sales, for which the section provides, and we cannot suppose that congress could be tempted, with the hope of a small additional price, which is imposed upon the purchasers of the mineral lands, to raise a question upon its compact with Michigan, or to disturb its ancient and honored policy. We think the interpretation which claims this as an exception in favor of Michigan, is to be preferred to that which excludes her from the mineral lands under this compact. And this conclusion is strengthened by the fact that the power of the President to make useful public reservations is connected in the exception with the school reservations. There could be no reason for limiting the power of the President to a single class of the public lands, and to exclude him from another in the same district. We conclude that this act does not withdraw the mineral lands from the compact with Michigan."

This decision also contains a very interesting discussion of the history of these grants to states. Among other things the court said:

"But the constancy with which the United States have adhered to the policy in the various compacts

with the people of the newly-formed States, and the care which congress has manifested to prevent the accumulation of prior obligations which might interrupt it, fully display their estimate of its value and importance. There is, obviously, a definite purpose declared to consecrate the same central section of every township of every State which might be added to the federal system, to the promotion 'of good government and the happiness of mankind,' by the spread of 'religion, morality, and knowledge,' and thus, by a uniformity of local association, to plant in the heart of every community the same sentiments of grateful reverence for the wisdom, forecast, and magnanimous statesmanship of those who framed the institutions for these new States, before the constitution for the old had yet been modeled. Has the discovery of minerals of value upon this section been deemed a sufficient cause for its withdrawal from the operation of this policy, and the compa.. s which develop it?"

The case of Ham v. State of Missouri, 18 How. 126, is instructive upon the interpretation of the language "or otherwise disposed of" used in these various acts. A grant to the state of Missouri was made in 1820, of Section 16 in each township. The act provided: "and when these have been sold or otherwise disposed of other and equivalent lands are granted." By the act of Congress of March 3, 1811, 10th section, it was provided that until after a decision of Congress thereon no tract of land should be offered for sale, a claim to which had been in due time and according to law presented to the recorder of titles in the district of Louisiana and filed in the office for the purpose of being investigated by the commissioners appointed to ascertain the rights of persons claiming lands in the territory of Louisiana. It is claimed

that the section 16 in township 34 in question in this case did not vest in the state by reason of this proviso in the act of 1811. The land in question was claimed by Ham as grantee of the party who had occupied it, and presented to the recorder his claim as provided by this statute. The claim was rejected in 1811, and from this time until 1828 it remained in abeyance. In 1828 Congress confirmed the title in the grantors of Ham, but the court held that the state's grant of 1820 had intervened, and that the fact that these lands were reserved from sale by the proviso of the act of 1810, did not prevent the state's right attaching thereto.

The court said:

"In our construction of the act of congress of March 3, 1811, we have interpreted the proviso to the 10th section of that act as neither declaring nor importing a final and permanent divestiture, or any divestiture whatsoever, of the title of the United States, but as a provision prescribing a temporary arrangement merely for the purposes of investigation, leaving the title still in the government, to be retained or parted with according to the dictates of justice or policy, as these might be developed by such investigation. Nothing is here ordained which is definite in its character. Inquiry is all that is directed. The language and plain import of the 6th section of the act of the 3d of March, 1820, confer a clear and positive and unconditional donation of the sixteenth section in every township; and, when these have been sold or otherwise disposed of, other and equivalent lands are granted. Sale, necessarily signifying a legal sale by a competent authority, is a disposition, final and irrevocable, of the land. The phrase 'or otherwise disposed of' must signify some disposition of the property equally efficient, and equally incompatible with any right in the State, present or poten-

tial, as deducible from the act of 1820, and the ordinance of the same year. Upon any other hypothesis, the right to the sixteenth section would attach under the provision of the act of 1820; the State would still have the title, and could recover the section specifically, and there would be no necessity for providing for an equivalent for that section."

In the case of Buttz v. N. P. R'y. Congress granted to the N. P. R'y. Co. "ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof the United States have full title not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed and the plat thereof filed in the office of the commissioner of the general land office," etc.

The land in question was a part of a reservation of the Lake Travers and Devil's Lake reservations, and it was claimed that it did not vest in the railroad company, because at the time of the final location it was a part of this reservation. The court by Mr. Justice Field said:

"The provisions of the third section, limiting the grant to lands to which the United States had then full title, they not having been reserved, sold, granted, or otherwise appropriated, and being free from pre-emption or other claims or rights, did not exclude from the grant Indian lands, not thus reserved, sold or appropriated, which were subject simply to their right of occupancy. Nearly all the lands in the Territory of Dakota, and, indeed, a large, if not the greater, portion of the lands along the entire route to Puget Sound on which the road of the company was to be constructed, was subject to this right of occu-

pancy by the Indians. With knowledge of their title and its impediment to the use of the lands by the company, Congress made the grant, with a stipulation to extinguish the title. It would be a strange conclusion to hold that the failure of the United States to secure the extinguishment at the time when it should first become possible to identify the tracts granted, operated to recall the pledge and to defeat the grant. It would require very clear language to justify a conclusion so repugnant to the purposes of Congress expressed in other parts of the act. The only limitation upon the action of the United States with respect to the title of the Indians was that imposed by the act of Congress, that they would extinguish the title as rapidly as might be 'consistent with public policy and the welfare of said Indians.' Subject only to that condition, so far as the Indian title was concerned, the grant passed the fee to the company. In our judgment, the claims and rights mentioned in the third section are such as are asserted to the lands by other parties than Indians having only a right of occupancy."

True, there was a provision in this grant to extinguish the Indian title, but grants of lands to aid in the construction of railroads are construed most strongly against the grantee, and the court says that the provisions of the third section limiting the grant of lands to those not having been reserved, sold, granted or otherwise appropriated and free from claims of right, do not exclude the lands covered by the Indians' right of occupancy. That is a construction of the language of this grant applicable here. The general doctrine on this subject is again well stated by Mr. Justice Lamar, in the case of United States v. Thomas, 151 U. S. 577, in which the court says:

"The general rule established by the land department in reference to the school lands in the different States is that the title to them vests in the several States in which the land is situated, subject to any prior rights of occupation by the Indians or others which the government has stipulated to recognize."

Again quoting from the language of Mr. Justice Lamar, while Secretary of the Interior, the court said:

"'That where the fee is in the United States at the date of survey, and the land is so encumbered that full and complete title and right of possession cannot then vest in the State, the State may, if it so desires, elect to take equivalent lands in fulfillment of the compact, or it may wait until the right and title of possession unite in the government, and then satisfy its grant by taking the lands specifically granted.' And this view he considered 'as fully sustained by the decision of the courts and the opinions of the Attorneys General,' and cited in support of it Cooper v. Roberts, 18 How. 173; 3 Opins. 56; 8 Opins. 255; 9 Opins. 346; 16 Opins. 430; Ham v. Missouri, 18 How. 126."

DECISIONS OF THE INTERIOR DEPARTMENT.

Although the holdings of the administrative department of the Government are by no means conclusive on the courts, they are instructive as showing the practical application which has been made of the acts of Congress on the one hand and the decisions of the courts on the other. It may be safely asserted that the land department has always endeavored conscientiously to follow the ideas of the Court as expressed in Beecher v. Wetherby, supra, and other cases which we have cited. The question of construction which we are forced to consider in this case, is

one which has been touched upon in many cases before the Department. The acts of Congress granting lands to states and railroad companies for various purposes have been numerous, and inasmuch as the form and language of these granting acts have not been uniform, countless questions of construction have arisen. To follow the devious course of decision throughout the years of controversy over school grants, swamp land grants and railroad grants, could serve no very useful purpose here, and would only add confusion. There are, however, one or two generalizations from these decisions which we desire to make, and we shall take the liberty of referring briefly to a few of the decisions.

In Re State of Kansas, 2 Copp. 1107, it was held that lands embraced within an Indian reservation at the time of the passage of the granting act were subject to the act:

"I am forced to adopt the view that the Indian reservations were just as much a part of the State of Kansas, in contemplation of the acts referred to, granting school sections, as any other portion. It is true that the State could not take possession at once, or as it did of other lands, for the right of possession was in the Indians temporarily. The right of the State to claim the lands was made dependent upon certain conditions, or contingencies, which the acts referred to named. When these things were accomplished, the State's right attached. The Indian reservations were excepted out of the boundaries of the State only so long as the Indian title remained unextinguished, and no longer. This title extinguished, the lands became part of the State, and when part of the State, the State was entitled to the 16th and 36th sections therein. The latter fact just as necessarily resulted as the former."

It is law in the Department that if the fee to the lands is in the Government at the time of the survey, then the granting act applies and such lands are subject to the claim of the state even though at the time of the granting act the lands may have been part of a reservation. Furthermore, it is held that if at the date of the survey it is found that Sections 16 and 36 are embraced within an Indian reservation or are Indian country, the state may elect to make indemnity selections at once or may await the extinguishment of the Indian right and eventually take the original sections. This has been settled in numerous decisions of the Department purporting to follow the course mapped out in Beecher v. Wetherby, Hydenfeldt v. Daney, and other cases.

See In Re Colorado, 6 Land Decisions, 412;

In Re Barnard, 9 Land Decisions, 553;

In Re Michigan Swamp Land Grant, 8 Land Decisions, 308;

Callanan v. C., M. & St. P. R. R. Co., 10 Land Dec. 285;

In Re Sherry, 12 Land Dec. 176.

In In Re Colorado, 6 Land Decisions, 412, it was said:

"I think, however, the true theory of the school grant is this: That where the fee is in the United States at the date of the survey and the land is so encumbered that full and complete title and right of possession cannot then vest in the state, the state may, if it so desires, elect to take equivalent lands in fulfillment of the compact, or it may wait until the

title and right of possession unite in the government, and then satisfy its grant by taking the lands specifically granted."

There is an interesting line of decisions holding that where land is at the time of the survey occupied under a homestead pre-emption, the state's title does not vest, but that if the pre-emptor fails thereafter to perfect his claim, or for any reason abandons it, the state's title will spring up and vest as of the date of the survey.

In Re Watson, 6 Land Dec. 71. The Secretary said:

"The act reserving lands to a territory for the benefit of schools not being a grant, but simply a reservation in contemplation of a future grant, Congress retains full control and power of disposition over such lands, until the contemplated grant shall take effect. Hence, it has provided that under certain circumstances the reservation for the benefit of schools shall be transferred from the specific section reserved to other lands as indemnity therefor.

"The territorial authorities are not bound to make selection of indemnity lands in lieu of lands within a sixteenth or thirty-sixth section, occupied by an actual settler prior to survey, but may await the subsequent action of the settler, and if he fails to prove up or abandons his claim, the right of the territory to have such lands held in reservation would attach immediately upon the extinguishment of the claim of such settler, and no right as against the territory can intervene by subsequent settlement, based upon the rights of a settler prior to survey, or the purchase of improvements thereof. This is the principle recognized in the case of Willingbeck (3 L. D., 383), and directly decided in the case of Johansen (5 L. D., 408)."

See also In Re Lowe, 1 L. D. 630;
Mette v. California, 1 Copp, 632;
Larson v. Pechierer, 1 L. D. 401, 403;
In Re Miner, 9 L. D. 408;
In Re Marceau, 9 L. D. 554;

In Re Talbot, 8 L. D. 495;
Gonzales v. Town Site of Flagstaff, 10 L. D. 348;
Revenaugh v. State of Washington, 13 L. D. 434.

It is held, moreover, that the right which the settler has at the date of survey is personal, and that a purchaser from him subsequent to the survey and prior to the publication of the settler's title, secures no rights as against the state.

Larson v. Pechierer, supra;
In Re Watson, 4 L. D. 169;
In Re Johansen, 5 L. D. 408;
Gonzales v. Town Site of Flagstaff, supra;
In Re Marceau, supra;
In Re Dermody, 10 L. D. 419;
Revenaugh v. State of Washington, supra.

These decisions are evidence of the uniform practice of the Department to regard the state as the owner of whatever interest in the land the general government had at the date of the survey. Strictly, under such circumstances, the state should be compelled to wait until this interest should vest in possession and became a valuable right. Of course, so long as the Indians or other parties were rightfully in possession, the state could not enter or derive any benefit from the land to which it, under this arrangement, actually took the fee. It was held that the state could not enter upon an Indian reservation to cut timber, and that in general a state, though en-

titled to the fee, could not in the slightest degree interrupt the Indian right of occupancy.

In re Sherry, 12 L. D. 176.

Turning now to the joint resolution of 1857, and assuming that such resolution is a part of the contract between the State and the government, it is clear that taking into consideration the memorial from the territorial legislature to Congress, which gave rise to the resolution what was sought was to indemnify the state against the loss of particular small tracts of land taken by settlers or for town site purposes.

Now, it is a well established rule that a proviso limiting a grant will be strictly construed.

United States v. Dickson, 15 Pet. 165.

The most that can be claimed by the Government is that the joint resolution of Congress of March 3rd, 1857, should be construed *in pari materia* with the act establishing the territorial government, the act authorizing the formation of the state government, and the constitution of the state accepting the proposition embraced in the latter act. For the purpose of this argument let us assume that it will be so construed. About the original intention of Congress there can be no dispute. It was undoubtedly its purpose to create out of the great public domain of the northwest a new territory, and eventually a new state, which should take its place side by side with the other territories and states which had been formed out of the same public domain, and be en-

dowed with the same rights and privileges in regard to the public schools.

For more than half a century certain well defined policies and methods of procedure had been followed in the creation of new states and territories. Among these policies the most favored was the one of reserving sections 16 and 36 of the public lands for educational purposes. We have seen that this policy antedated the constitution. Nowhere in the legislative history of this country can there be found any positive intention to depart from this policy, unless it be found in the act of 1889, construed in accordance with the contention of the Government in this case. It is safe to say, then, than Congress started out in 1849 to carry out the well settled and time-honored policy with respect to this new territory of Minnesota. The act of that year, forming the territorial government, absolutely reserved sections 16 and 36 for the benefit of the schools of the territory, and of any state and territory to be erected therefrom. In this act there was no reservation whatever in favor of bona fide settlers before the survey, or in favor of town-site purchasers in good faith, coming under the act of Congress authorizing the laying out of town-sites on unsurveyed government land. These persons settled or purchased at their peril.

Then came the act of 1857, authorizing the formation of the state government. This act contained definite propositions to the state, amounting to a substantial fulfillment of the pledges previously em-

braced in the act of 1849. But there was this proviso: That if any of the lands had been sold, or otherwise disposed of, other lands equivalent thereto and as contiguous as may be should be granted to the state in lieu of the lands so lost. In the meantime, the citizens of the territory had become convinced that the rigid enforcement of the act of 1849, and the carrying out of such a pledge, without qualification, would work hardship upon many individuals who had settled in good faith upon the public lands, with a view to securing ultimate preëmption rights, and also upon individuals who had made purchases under the town-site act. It was thought that justice might easily be done to both the individuals and to the territory by securing to these individuals the lands which they had taken up in good faith, and at the same time permitting the territory or state to select other lands in lieu of those which would thereby be given up. In any event, the lands so lost would be inconsiderable in quantity, and, as a great part of the state had already been surveyed, ample lands were available to fill up the state's quota out of lands reasonably contiguous. To that end the territorial legislature passed the memorial to Congress of February 26th, 1856. It will thus be seen that the memorial and the joint resolution, which took its rise therefrom, were the direct result of the desire to secure a specific remedy for a specific trouble. The territorial legislature simply requested relief from a certain embarrassing situation, which it set forth in detail

in its memorial. Can it be said that because the people of the territory saw fit to make this application in the interest of the actual settler and purchaser in good faith, there was any intention whatever to release the United States from the solemn pledge which it had made in the act of 1849, or that Congress had any intention of breaking faith with the State of Minnesota, or any other intention than granting the relief prayed for in the memorial? This joint resolution was passed five days after the act providing for the formation of the state government, in which Congress had made a definite proposition to the state to be accepted by the constitution to be formed thereunder. It was evidently the intention to specify clearly what acts of settlement, cultivation and improvement, and what sale under the town-site act, should relieve the lands from the operation of the school grant as proposed in the act of February 26th, 1857. Nothing had occurred to indicate that the people of Minnesota, or the Congress of the United States, had changed their minds in relation to this pledge. Contemporaneous history supplies us with no reason why the joint resolution of 1857 should be expected to go further than the memorial of 1856, upon which it was founded, and in reply to which it was passed. The proposition to the state provided that if sections 16 and 36 were sold, or otherwise disposed of, other lands should be granted in lieu of them. The memorial of the legislature and the joint resolution of 1857 were perfectly consistent with this

pledge, but to hold that a mere disjunctive phrase, couched in the most general terms, should be construed as authorizing Congress thereafter to dispose of a large domain, and thereby deprive the state of the school lands, is a construction, we dare say, which was not thought of at that time, either by Congress or by the people of Minnesota. We do not argue thereby that this phrase, "reserved for public uses before the survey" was altogether meaningless. It can receive a construction perfectly consistent with the proposition to the state contained in the act of Congress of 1857, to-wit: An authorization to Congress to reserve the right to hold out specific tracts of land for governmental purposes, as we shall hereafter show. But it is inconsistent with the history of the times, and with the previous pledges of Congress, to suppose that it was intended to justify the act of 1889, as that act is construed by the Land Department.

It could hardly have been the intention of Congress that an entire Indian reservation or tract of unceded Indian territory should be considered as coming within the terms of this act to defeat the right of the state to those sections. We contend that the public uses which were intended to operate as an appropriation prior to the surveys were uses to which the land itself might be put or employed for governmental uses. This land is not put to any public use; it is to be sold to settlers under the preëmption laws, or to pine land speculators and the proceeds invested for

the benefit of the Indians in exactly the same way as the reservation of the Stockbridge and Munsee Indians was ordered to be sold in Wisconsin, reviewed in the case of Beecher v. Wetherby. Under this sale no part of the land is reserved for public uses. It is sold for private uses. The use the money is to be put to may or may not be a public use. It is to be used for the benefit of the Indians. This form of reservation of land for public uses is very common, and we believe that it was intended to cover "public uses, as for arsenals, fortifications, light houses, custom houses, and other public purposes for which real property is required by the government," as was said in Gonzales v. French, 164 U. S. 338 and Shipley v. Cowen, 91 U. S. 330. Can it be said with any degree of force that the act of 1889 provides for the public purpose for which "real property is required by the government?"

Congress undoubtedly intended such a public use as was referred to in Spaulding vs. Martin, 11th Wis., 273, in which Mr. Justice Paine says: "But on the other hand, the Government of the United States has need of specific portions of land in various portions of the country, usually small tracts, for military or other purposes, for the actual transaction of the business of the Government. It is provided by law for the reservation of such tracts. They are known as 'Reservations.' There is significance in the word. Reserved from what? Obviously reserved from disposition in the manner and for the purpose for which

the general body of the public lands are disposed of. The particular necessity of the Government with respect to these reservations takes them out of the main body of the public lands and of the policy applicable thereto."

Not an acre of the land sold under that act will be used by the government for any known governmental purpose. We understand the words to mean the actual occupancy of the land to the exclusion of any other use to which it could be put by private owner. It appears incredible that in 1849 and 1857, when the greater part of the state was a wilderness and its population composed almost wholly of Indians, such a disposition as their sale for the creation of a fund for the Indians was in the mind of Congress. The language should be construed in the light of the circumstances existing when the compact was entered into. The extinguishment of the Indian title must have been contemplated, else express words would have been employed to negative them. The fact is that by no express language did Congress attempt to save to itself the right to dispose of the lands to other parties than the state. The grant having been expressly made of sections 16 and 36, the act of 1889 will not be deemed to contemplate any other disposition of them in the absence of express words evincing such a purpose, for, as was said in Beecher v. Wetherby, supra,—

"It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section sixteen (16) in every township of the public

lands in the state, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title to the State upon her acceptance of the propositions as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially excepted.
* * *

"It will not be supposed that Congress intended to authorize a sale of land which it had previously disposed of."

But even to hold that the language "reserved for public uses," employed by Congress in 1857, should be deemed to include the sale of a large tract of land for the purpose of devoting the proceeds to the support of an Indian tribe, by no means concludes the state in this case. It is our contention that though this language may possibly have been operative in 1857, it certainly has not been operative since the adoption of the constitution of the state. To be sure, the joint resolution was passed prior to the adoption of the constitution of Minnesota, but the latter instrument makes no mention whatever of the resolution, and simply accepts, in terms, the provisions of the act of Congress passed Feb'y 26th, 1857, entitled "an act authorizing the people of the territory of Minnesota to form a constitution and state government, pre-

paratory to their admission into the Union on an equal footing with the original states." It was evidently in the mind of the people of Minnesota, in adopting this constitution, to accept the provisions of an act which only provided that lands sold or otherwise disposed of should be taken out of the school grant. The approval by Congress of this constitution has the effect of an act of Congress passed subsequently to the joint resolution. The situation, therefore, presents this state of facts: First, a memorial seeking specific relief; second, a joint resolution in reply to the memorial, but employing language so general as possibly to give some room for the argument that it went further than the relief prayed for; third, the constitution, and the subsequent act approving the constitution, making no mention whatever of the joint resolution, but, on the contrary, harking back to the original proposition made prior to the joint resolution. Now, assuming, for the sake of argument, that the resolution really proceeded further than the memorial, then we say that the subsequent action of the state, and of the Government as well, utterly ignoring this circumstance (if it existed at all) amounts to a nullification of the joint resolution in so far as it can be said to have attached conditions and qualifications not embraced within the original proposition and for which the people had never made any request.

In this connection the case of the State of Minnesota vs. Bachelder, 1st Wallace, 109, is instructive. There the Attorney General of the State made the

point that the joint resolution of 1857 was void, and that, therefore, the state might hold the lands as against preëmptors in good faith and purchasers under the town-site act. His main contention was that the original act granting the lands for school purposes amounted to a dedication, perpetual and irrevocable. The Court, however, held that it was not necessary to go into the question of the power of Congress to pass the resolution, since the state should be deemed to be bound by its own action in the premises. It had requested in its memorial this particular legislation with respect to preëmptors; it was, therefore, fair to presume that this modification, being grafted upon the original proposition, at the state's own request, became a part thereof, so that the subsequent entry into the Union was an acceptance by the state of the propositions so modified. It will be seen, then, that according to the case in 1st Wallace, the state is bound by modifications engrafted upon the original propositions at its own request. It is clearly an unwarranted enlargement upon the doctrine of that case to say that the state should be bound by modifications otherwise inserted. Especially is this true when the state and the United States subsequently entered into a formal contract, evidenced by the constitution and the act of admission, without making any reference whatever to the joint resolution. It is one thing to say that the requested modifications were by the parties understood to be a part of that contract, but it is quite another thing to assert that any other feature

can possibly enter into it, without particular reference being made thereto.

But assuming we are wrong about this construction, there is nothing in the act of 1889 that would indicate that Congress intended to sell sections 16 and 36.

No deed was necessary to vest the title of school lands in the state.

Gaines v. Nicholson, 9 How. 355.

Sections 16 and 36 are not mentioned in the act of 1889.

Not having been mentioned in the act of 1889, and those sections having been previously granted to the State for the use of Public Schools, the Act of 1889 will be construed not to embrace these sections.

Wilcox vs. Jackson, 13th Peters, 498.

Spaulding vs. Martin, 11th Wis., 262.

Lake Superior &c. Co. vs. Cunningham, 155 U. S., 373.

Ex Parte Prow Dog, 109 U. S., 556.

In the case of Wilcox vs. Jackson, supra, the Act of Congress of June 26, 1834, authorized and directed the sale of all of the lands in the north-east district of Illinois. Previous to that time there was a military reservation on these lands. The court held that by implication the military reservation would be excluded from the act. The court said:

"But we go further, and say that, whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of pub-

lic lands, and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it, although no reservation were made of it."

In the case of Spaulding vs. Martin, supra, a tract of land lying on the south side of the Fox River in the County of Columbia and State of Wisconsin, known as Fort Winnebago, had been surveyed prior to 1835 by authorities of the United States, and the President had set aside this tract of land for military purposes. In 1846 Congress granted an amount of land equal to one-half of three sections on each side of the Fox River, through which the Fox River passes, for its improvement, the same to take effect when the state of Wisconsin should be admitted into the Union. The Court held that the latter act would be construed not to include the reservation for military purposes. The Court said:

"But on the other hand the government of the United States has need of specific portions of land in various parts of the country, usually small tracts, for military or other purposes, necessary for the actual transaction of the business of the government. It has provided by law for the reservation of such tracts. They are known as 'reservations,' and there is a significance in the word. Reserved from what? Obviously reserved from disposition in the manner and for the purposes for which the general body of the public lands are disposed of. The very necessities of the government with respect to these reservations take them out of the main body of public lands, and of the policy applicable thereto.

"When the government therefore, obviously in pursuance of its general policy in respect to its public lands held for sale, makes a grant to the state of large quantities, reaching through an extensive tract of country, where it has large bodies of those lands,

it is impossible to believe they intended to grant those tracts which had been set apart for public use. On the contrary, such a grant can be reasonably construed as referring only to those lands within the policy which induced it. And it must be assumed that these reservations were not specifically excepted in the grant, for the reason that they were so obviously outside of its scope and intent, that such exception was not supposed to be necessary. And this view is sustained by the only authorities that have ever passed upon the question. In Wilcox vs. Jackson, 13 Peters, 498, the Supreme Court of the United States used the following language: 'We go further and say that whenever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands, and that no subsequent law or proclamation, or sale would be construed to embrace it, or to operate upon it, although no reservation were made of it.'"

In the Lake Superior Company vs. Cunningham, supra, Mr. Justice Brewer said: "General terms in a subsequent grant are always held to not include lands embraced within the terms of a prior grant."

The act of 1889 and the enabling act of 1857 are in pari materi. They relate to the same general subject—the disposition of the public lands. The later act must be so read as to harmonize with and effectuate the policy of the earlier one.

"The legislatures are presumed to know existing statutes, and the state of the law, relating to the subjects with which they deal. Hence, they would expressly abrogate any prior statutes which are intended to be repealed by new legislation. Where there is no express repeal none is deemed to be intended, unless there is such an inconsistency as precluded this assumption; then it yields only to the extent of the conflict."

Sutherland, Stat. Con., Sec. 287.

"When enactments separately made are read in pari materia they are treated as having formed in the minds of the enacting body parts of a connected whole, though considered by such body at different dates, and under distinct and varied aspects of the common subject. Such statutes are taken together and construed as one system; and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions."

Sutherland, Stat. Con. Sec. 288.

In view of the policy of the government, and the many declarations of Congress and of the courts, to dedicate Sections 16 and 36 for the benefit of the schools in all the states and territories—in view of the liberal construction given these provisions by the land office and by the courts, is it reasonable to suppose that Congress intended to appropriate 197,000 acres of land in this great territory, worth many millions of dollars, for the benefit of 1,168 Indians? These lands are immensely valuable. In the report of the Chippewa Commission it is stated that the timber upon the pine lands of this ceded country is worth from $25,000,000 to $50,000,000. Anyone knows that the agricultural lands are worth from five to ten dollars an acre. Is it necessary by any forced construction, to increase this princely sum to be invested for the benefit of the Indians, and thereby deprive the state of so much from its school funds? Many of these Indians are citizens and entitled to participate in the benefits of the school fund.

The act of 1889 and the treaty made in pursuance thereof, was certainly passed and entered into with the full knowledge of the guaranty of the government and of its policy for a hundred years, and must be construed in the light of this policy. Congress has been ever zealous to guard this school fund. In 1891 an act entitled "An act making appropriations for the current and contingent expenses of the Indian department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1892, and for other purposes," was passed. $90,000 was appropriated for the first payment under this treaty, whereby the unceded lands in Red Lake County were ceded to the United States. 26 Stat. at Large, 1003. By the last section of this appropriation bill (26 Stat. 1044) it was provided:

"No provision for settlement on or sale of the lands in the various agreements hereinbefore mentioned, shall apply to sections 16 and 36 thereon, which lands in the states are hereby granted to the state in which they are situated for the support of common schools of such state under the limitations prescribed by law, and such sections in the territories of the United States are reserved from occupancy, entry or sale under any land law of the United States; but this provision shall not apply to mineral land, which may be disposed of under the laws applicable thereto."

Here was a declaration of the Congress that under the Chippewa Indian treaty mentioned in this act, it was the intention that no settlement or sale of lands should interfere with the rights of the state therein. Again, in 1891, Congress passed an act, 26th Statutes, 796, providing in substance that the states and terri-

tories might *waive* their right to lands within the Indian Reservations and accept in lieu thereof indemnity lands. The act, however, contained a proviso as follows: "Provided, however, that nothing herein contained shall prevent any state or territory from awaiting the extinguishment of such military, Indian or other reservations and the restoration of the lands therein embraced to the public domain and then taking these sections 16 and 36 in place therein; but nothing in this proviso shall be construed as conferring any right not now existing." This act clearly indicates that Congress recognized its previous obligations, and recognized the fact that the states have the right to the lands in these several reservations or unceded Indian country, and provided that the states might waive these rights, but nothing therein should compel them to do so. If the state had no right, no waiver would be necessary. The entire Congressional history of these acts shows the fidelity with which the representatives of the people in Congress have adhered to the pledges made to the State of Minnesota, and to the other states, devoting these sections, 16 and 36, in each township to the benefit of the public schools.

But the question being in dispute before the Secretary of the Interior as to the right of the state to these lands, Congress approved an act February 26, 1896, 29 Stat. page 17, in which it was, among other things, provided:

"Sections numbers 16 and 36 in each township so surveyed shall not be sold until the claim of the state

of Minnesota to the ownership of said sections as a part of the school lands of said state shall have been determined."

The Secretary of the Interior claims that he has determined it by his opinion filed on May 9, 1899, 28 L. D. 374.

True, Secretary Hitchcock in the foregoing case decided that the State of Minnesota was not entitled to the lands, and Senator Thomas H. Carter, when Commissioner of the General Land Office, Sept. 9th, 1891, decided that the State of Minnesota was entitled to them. The opinion of the latter is contained in the Stipulation of Facts, page 5, et seq. It is not a new thing to have even the heads of the departments disagree and overrule each others' decisions, but we submit the two opinions representing opposite views in this case for the consideration of the Court.

If Minnesota is denied the right to these lands it will be the first western state which has failed to receive sections 16 and 36 in the Indian reservations or unceded Indian country sold for the benefit of the Indians under acts similar to that of 1889. We have seen that in Wisconsin the land of the Menomonees was sold under a similar act and that this court held that sections 16 and 36 must be construed as not included in the sale. In Kansas, under similar acts, the lands of the Osage Indians and other tribes were sold and the state received sections 16 and 36. It may be noted here also that the joint resolution of Congress of 1857, which the Secretary of the Interior relies on to differentiate the lands in the Red Lake

country from those in other reservations in other states, also applied to Kansas and Nebraska.

Such has been the uniform practice of Congress, of the Courts and of the Department, and if in this case there is any question of doubt as to whether the state is entitled to the lands or not, or as to what Congress meant in the various acts and resolutions affecting these lands, that doubt should be resolved in favor of the uniform practice of Congress and the well understood policy of the people that sections 16 and 36 should be devoted to the public schools.

The case of Missouri, Kansas & Texas R'y. Co. v. Roberts is easily distinguishable from the case at bar. In that case, by act of Congress of July 26th, 1866, 14 Statutes, 289, there was absolutely granted to the M., K. & T. R'y. Co. a strip of land 200 feet in width through all the public property, including Indian Reservations. This the Court held Congress had an absolute right to do, as the fee of the Indian Reservations was in the government.

Section 6, Act 1866, 14 Stat. 290.

The language of the grant is that "there is hereby granted to the Pacific Railroad Company," etc. The road was located prior to June 6, 1870. Roberts claimed under a patent from the State made May 25, 1871, claiming that the right-of-way strip 200 feet wide was a part of a school land section granted by Congress prior to the railway grant of July 26, 1866. The facts in relation to that are as follows:

The Osage Indian Reservation was specifically reserved as an Indian Reservation by act of Congress

of June 2, 1825. The boundaries were fixed and the land specifically reserved and the Indians given the right to occupy and cultivate these lands without reservation or molestation.

Indian Treaty, 7 Stat. 240, Article 2.

When the grant to the Railroad Company was made the Indians still occupied these lands and they were never ceded to the government until 1867.

When the constitution of Kansas was submitted to Congress, it contained the following provision:

"Provided always, that the following conditions be agreed to by Congress," among which conditions was the followirg: "That 'sections numbered sixteen (16) and thirty-six (36) in each township in the State, including Indian reservations and trust lands, shall be granted to the State for the exclusive use of common schools; and when either of said sections or any part thereof has been disposed of, other lands of equal value, as nearly contiguous thereto as possible, shall be substituted therefor.' "

Here was an attempt to have granted to the State Sections 16 and 36 in the Indian Reservations, whether those reservations or any part of them were sold or disposed of or appropriated by Congress for other purposes or not. This was rejected in specific language by Congress. 12 Statutes, 126, 127. Said statute contained the following:

"Provided, That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treat between the United States and such Indians, * * * or to affect the authority of the Govern-

ment of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never been passed."

It was clear therefore, that whether or not the State would be entitled to Sections 16 and 36 when the Indian title was extinguished, it was not entitled to any part of the reservation until that title was extinguished, and the M. K. & T. Railroad having received a grant of 200 feet right-of-way through that Indian reservation and its rights having attached prior to the State's rights, the Railroad Company had the best and prior title to the 200 foot strip. The court said:

"This rejection by Congress of the original claim of Kansas to the school lands in townships sixteen (16) and thirty-six (36), and its subsequent abandonment by the State itself, and the concession to Congress of the right of absolute control of the lands until such right should be extinguished by appropriate legislation, distinguishes the case materially from that of Wisconsin, which was considered in Beecher v. Wetherby, 95 U. S. 517, and upon which the defendant in error principally relies. No such right was relinquished until after the grant of the right of way under the act of Congress of July 26, 1866, to the Missouri, Kansas and Texas Railway, and the title of the lands composing that right of way had become vested in that company."

It might be well here to mention that when the rights of the Indians were extinguished under the treaty which was proclaimed January 21, 1867, the State received Sections 16 and 36, in each township, and Congress declared by joint resolution that the

"16th and 36th sections in each township of said lands shall be reserved for state school purposes in accordance with the provisions of the act of the admission of this state of Kansas," thereby showing that it was the understanding of Congress that the act admitting Kansas into the Union gave it Sections 16 and 36 whenever the Indian title was extinguished.

Again, in this case there was a specific reservation of a comparatively small tract of land for the use of the Indians. The act provided that "there shall be reserved to and for the great and little Osage Indians or nations aforesaid, so long as they may choose to occupy the same, the following described tract of land:"

The case of Leavenworth, Lawrence & Galveston R. R. Co. v. United States, 92 U. S. 733, involved the same Indian reservation. In this case Congress in 1863, 12 Statutes, 772, made a grant of lands to the State of Kansas to aid in the construction of certain railroads, among others, the Leavenworth Co. This company was granted:

"Every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road and each of its branches. But in case it shall appear that the United States have, when the lines or routes of said road and branches are definitely fixed, sold any section, or any part thereof, granted as aforesaid, or that the right of preëmption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purpose aforesaid, from the public lands of the United States nearest to tiers of sections above specified, so much land, in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have

sold. reserved, or otherwise appropriated, or to which the right of preëmption or homestead settlements have attached as aforesaid."

The land claimed in this case was the Osage Reservation. By a treaty with the Great and Little Osage Tribes of Indians on June 2, 1825, 7 Statutes, 240, the land was reserved for an Indian reservation. The treaty contained the following provision:

"Article II. Within the limits of the country above ceded and relinquished, there shall be reserved to and for the Great and Little Osage tribe or nation aforesaid, so long as they may choose to occupy the same, the following described tract of land."

The question was whether the land grant attached to the land in the Indian reservation. It will appear that the Indian reservation was in existence and in the occupation of the Indians at the time the land grant was made by Congress. A majority of the court held that the land grant did not attach, but this holding was placed upon two grounds: First, that a land grant only attaches to so much of the public domain as was subject to sale or other disposal at the time the land grant was made, and that it appearing in this case that at that time the land was set aside and forever reserved for an Indian reservation, the land grant did not attach, although in 1865 the lands were ceded to the United States by a treaty with the Osage Indians. 14 Statutes, 687.

The court held that for all practical purposes the Indians owned the land, as the actual right of possession, the only thing deemed of value, was forever guaranteed to them by the treaty until they should

elect to surrender it to the United States. This was a greater right than merely the right of possession of unceded Indian lands. This was a treaty setting aside a specifically defined territory as an Indian reservation.

Second, The court held that in all grants of land to aid in the construction of railroads the grant is most strongly construed against the grantee.

Neither one of these grounds applies to the case at bar. Grants of school lands are not strongly construed against the State, but are liberally construed in the interest of the public school system. And, furthermore, it cannot be claimed that unceded lands occupied by the Indians, were not intended to be included in the grant to the State of Minnesota. It is worthy of note that in this case there was a dissenting opinion by Mr. Justice Field, Mr. Justice Swain and Mr. Justice Strong, and it was only by reason of this strict construction against the railroad company that these lands were excluded from the grant.

In conclusion we have but to sum up in a general way, without further reference to the authorities, the line of argument presented in the foregoing pages.

We have said that the question here is one of construction. As in every such case, there exist two points of view from which the subject may be considered—the one technical and of a more purely legal nature; the other broad and comprehensive. Frequently these two points of view diverge and eventually lead to opposite conclusions, but in this case they tend in the same direction and support each other. Treating this case in its technical aspect we have dis-

cerned really two problems of construction. The first of these is centered about the joint resolution of Congress passed in the year 1857. The exigencies which that resolution was designed to meet, and the peculiar circumstances surrounding its passage, have been fully discussed. Had it not been for the interpolation of the phrase "otherwise reserved for public uses," the case of the State of Minnesota vs. Ethan Allen Hitchcock would doubtless never have appeared upon the docket of this court. In dealing with that phrase we have contended that a public use, within the meaning of the resolution, is a Governmental use. It is to be remembered that we are here considering a contract, and not passing upon the question of sovereign power. Therefore, the sole issue is one as to the intention of Congress in using these particular words at this particular time. The sale of these lands in order to raise a fund for the benefit of the Chippewa Indians may be a public use or public purpose in one sense, but we are concerned here simply with the question whether this is *the sort of* public use which can reasonably be supposed to have been in the mind of Congress in the year 1857. Our examination into the situation existing at that time has convinced us that no wider significance is to be attached to the expression than that of a purely governmental use So construed, the contract between the United States and the State of Minnesota would have been perfectly clear, and Congress would have been precluded from afterwards appropriating

sections 16 and 36 for such a public use as is here contemplated

Assuming, however, that our contention with respect to the joint resolution is unjustifiable, then we come to the second question of construction, that is to say, whether Congress by the act of 1889 meant to order the sale of sections 16 and 36. The fact that the language employed in the latter act is general in its character, and that no reference whatever is, in terms, made to sections 16 and 36, renders applicable the rule laid down in Wilcox vs. Jackson. Under that rule it cannot be supposed that Congress intended, by the employment of general language, to derogate from its previous grant to the state for school purposes.

So much for the technical aspects of this case. The principles employed are so clear and indubitable, and the facts fall so clearly within those principles, that the conclusion seems inevitably to follow in favor of the state on both of the points above mentioned.

But this is no ordinary case. The larger equities which we shall now review carry with them the overwhelming conviction that Congress could not have intended to divert these lands from educational purposes and devote them to the use and benefit of the Indians. Even a casual consideration of the issues here involved discloses the fact that the conflict is not between the State and the United States, but between two great policies of the National Government. The state presents its bill in equity as the trustee

for the educational interests of the people. The Land Department opposes the bill, claiming to be trustee of these lands for the benefit of the Indians. It is insisted that Congress, by the act of 1889, took from one beneficiary and gave to the other. The solution of the problem here raised is to be found by an examination of the policy of the United States toward the Indians on the one hand, and toward the public school system, on the other.

Dealing first with the Indians, it has been shown that throughout the history of legislation with respect to them, one principle, at least, has been constant. The Indian has never been regarded as the owner of the soil in fee. His occupancy is temporary, and his title, if so it may be styled, is ever shifting. His history is the tale of continual withdrawals before the tide of advancing civilization. While the Government, for a long period, dealt with him by treaty, as if he were an independent nation, yet the stubborn fact has always been apparent that in reality he was a subject, with only those rights and liberties which the Government saw fit to accord to him. To-day the Indian is termed "the ward of the nation." He not only can be moved about from place to place as Congress wills, but he is so moved about. It has always been understood that his title of occupancy to the public domain is eventually to be extinguished. Until within the last decade it has always been expected that the Indian would live by himself on reservations which should be assigned from time to time. But recently the attitude of the Government in this

respect has changed. Under the Dawes Act it is declared to be the settled policy of the Government to *force* the Indian to become the owner of land in severalty and a citizen of the United States. The act of 1889, whatever view is taken of the question raised therein in this case, is designed to carry out the same idea. It provides for the allotment of the diminished reservation to the Indians in severalty. Over twenty-five hundred of the Chippewa Indians in Minnesota, out of about seven thousand, have already become citizens of the United States, and, as such, are entitled to participate in the benefits of the common schools and the funds devoted thereto. With this ultimate disposition of the Indian question in mind, it cannot be said that there is any longer any conflict between the interests of the Indian and the interests of the public schools with regard to sections 16 and 36. If the Indian is to become a citizen of the United States, and of the state, and to enjoy all of the privileges incident to such citizenship, then the devotion of the sections in controversy to educational purposes is for his welfare as well as for that of all other persons in the community. In any event, to construe the act of 1889 in the manner contended for by the Government, is to accuse Congress of an inconsistency. It can hardly be said that Congress would enact legislation with a view to the ultimate citizenship of the Indian, and, at or about the same time, legislate in such a way as to diminish the privileges of such citizenship. There would be no policy in diverting these lands

lying within the limits of sections 16 and 36 from an object of which all Indians were eventually destined to participate in the benefits.

In the second place, the constant and unvaried attitude of the United States toward its public school system is the most conclusive answer that can be made to the argument of the respondent. No grander conception ever swayed the founders of any government than that which induced the setting aside of certain liberal portions of the public domain for school purposes. No nation has ever placed its educational ideals so high. It is to the everlasting credit of this country that while many of its early policies, including that toward the Indian tribes, have been subject to vacillation, this policy has never changed. The original idea was to promote the diffusion of knowledge throughout the country in the most effective manner. To this end the central section in every township was to be granted for school purposes. The main object was, of course, to have a certain amount of land, or a fund derived therefrom, located in every corner of the nation, so that no section or community could ever say that it had not been provided by the National Government with the means of fostering common school education. This theory has never been departed from. The liberality of the Government, to be sure, in many instances has been increased, so that two sections instead of one in each township have been devoted to this use in the grants made during the last fifty years. A concession has also been made to the rights of individuals who have

settled upon the public lands before the survey and before the school sections could be actually designated. In such case the innocent individual has been allowed to hold his claim, and the state has been directed to select lieu lands, but it is always to be understood that the lieu lands are to be "as contiguous as may be" to the lands which were lost, thus carrying out the idea that the school lands are to be scattered throughout the public domain. We cannot get away from the simple fact that our Government has always held true to the principle that a fund, in the shape of a certain portion of the public domain, was to exist, as far as possible, in every township within its jurisdiction, for the diffusion of knowledge.

It is almost unnecessary for us to point out here that the contention of the Government in this case is absolutely and unqualifiedly at variance with the theory of these school grants adhered to from the earliest times down to the present day. If the act of 1889 is to be given the construction asked for by the respondent, the State of Minnesota, as trustee for the public schools, will be ousted from a large tract of territory, embracing between three and four million acres. Within that tract there will then be not one single acre of ground available as a means of raising revenue to support a public school system. In the light of history and established practice, that Congress should do this, even by positive and direct legislation, assuming it to have the power, is hardly conceivable. That this court should, by inference from general language not specifically applicable to

the case, charge Congress with such an intention, is difficult to comprehend.

Another suggestion is worthy of note. Both the act authorizing the formation of the state government and the joint resolution of 1857 made provision for the selection of lieu lands in the place of those preëmpted, sold for town-site purposes or reserved for public uses. But such lieu lands lands were to be "as contiguous as may be" to those lost and, by the terms of the joint resolution, the act of May 20, 1826, entitled, "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for" was to be followed. This latter act provided that lieu lands were to be taken from the same land district with those which had been lost. Taking these facts into consideration, and also the further facts that the state is entitled to wait until the Indian title to occupancy is extinguished, if it should elect to do so, and that there has never been any time limit on the Indian occupancy, the theory of the Government in this case involves us in certain serious difficulties. There is, of course, no doubt that so long as the state was sparsely settled lieu lands could be easily selected for the small tracts that would be lost in the manners specified, but the loss of sections 16 and 36 in large tracts of unceded Indian country, where the Indian title might not be extinguished for many years, would render it practically impossible for the state to obtain proper indemnity lands. The contention that they should be as contiguous as may be would

have only a remote application to the situation, and the contention of the act of 1826 that the lieu lands should be selected from the same land district could not be fulfilled at all. We think it was clearly never within the contemplation of Congress that the state should lose its school lands throughout such a vast district as is here contended for. Furthermore, it is apparent that if the state should elect to wait and take sections 16 and 36 in the country occupied by the Indians at the date of the survey, the delay might stretch over many years. In all human probability, after the lapse of, say, fifty years, the public domain, excepting that occupied by the Indians, would have been conveyed away by the United States, and in that event the state would have to look to these specific sections for its school lands, or go without. If it is to be understood, then, that the United States meant to retain the power to dispose of sections 16 and 36, freely, and for any purpose which Congress might see fit to regard as a public use, then it will be seen that the original grant to the state might turn out to be of no value however. In other words, the point which the state makes is just this: If, placing reliance upon the pledge of sections 16 and 36, the state should elect to wait for the extinction of the Indian title, it is reasonable to suppose that there would come a time when the disposal by the Government of these sections would throw the state back upon its paper right to select lieu lands when there would be no lieu lands to select. The state would then find itself the possessor of a worthless grant.

We do not believe that the possibility of such a situation could have been in the contemplation of Congress and the people of Minnesota when the contract was made. We believe that the only reservations with respect to these lands were, first, that in favor of bona fide preëmptors and purchasers under the town-site act, and second, that in favor of such governmental uses as might be found to be necessary in the course of the natural growth of the country. Whatever view may be taken of the power of Congress to render the state grant worthless, still the presumption against the exercise of such a power by Congress is so strong that doubtful language would hardly be held to compass such an intention.

Respectfully submitted,

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Chippewa Indians in Minnesota.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING A COMMUNICATION FROM THE SECRETARY OF THE INTERIOR, RELATIVE TO THE CHIPPEWA INDIANS IN THE STATE OF MINNESOTA, MARCH 6, 1890. REFERRED TO THE COMMITTEE ON INDIAN AFFAIRS.

To the Senate and House of Representatives:

In pursuance of the authority and direction contained in the act of Congress approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," three commissioners were appointed by the President on February 26, 1889, as therein authorized and directed, namely: Henry M. Rice, of Minnesota, Martin Marty, of Dakota, and Joseph B. Whiting, of Wisconsin, to negotiate with said Indians.

The commissioners have submitted their final report, with accompanying papers, showing the results of the negotiations conducted by them, and the same has been carefully reviewed by the Secretary of the Interior in his report to me thereon.

Being satisfied from an examination of the papers submitted that the cession and relinquishment by

said Chippewa Indians of their title and interest in the lands specified and described in the agreement with the different bands or tribes of Chippewa Indians in the State of Minnesota was obtained in the manner prescribed in the first section of said act, and that more than the requisite number have signed said agreement, I have, as provided by said act, approved the said instruments in writing constituting the agreement entered into by the commissioners with said Indians.

The commissioners did not escape the embarrassment which unfortunately too often attends our negotiations with the Indians, viz.: An indisposition to treat with the Government for further concessions while its obligations incurred under former agreements are unkept. I am sure it will be the disposition of Congress to consider promptly, and in a just and friendly spirit, the claims presented by these Indians through our commissioners, which have been formulated in the draught of a bill prepared by the Secretary of the Interior and submitted herewith.

The act of January 14, 1889 (25 U. S. Stat., 642) evidently contemplated the voluntary removal of the body of all these bands of Indians to the White Earth and Red Lake Reservations; but a proviso in section 3 of the act authorized any Indian to take his allotment upon the reservation where he now resides. The commissioners report that quite a general desire was expressed by the Indians to avail themselves of this option. The result of this is that the ceded land can-

not be ascertained and brought to sale under the act until all of the allotments are made.

I recommend that the necessary appropriations to complete the surveys and allotments be made at once available, so that the work may be begun and completed at the earliest possible day.

A copy of the report made by the commissioners, with copies of all of the papers submitted therewith except the census rolls, is herewith presented for the information of the Congress.

BENJ. HARRISON.

Executive Mansion, March 4, 1890.

Department of the Interior,
Washington, January 30, 1890.

The President:

There has been filed in this Department the report of the Chippewa Commission, one copy whereof is herewith transmitted for your consideration and action.

This Commission was formed under an act entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," being chapter 24, United States Statutes at Large, volume 25, page 642, approved January 14, 1889.

The first section of the act authorizes the creation of the Commission, designates its purposes, provides for certain conditions precedent as to a census to be taken, and declares in what manner the cession and relinquishment of the lands therein sought to be ob-

tained by the Government shall be effected. The section is as follows:

"That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the Reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of those two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: *Provided further*, That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and be-

fore completing the same, make an accurate census of each tribe or band, classifying them into male and female adults and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided."

The Commission was appointed by the President on the 26th day of February, 1889, and the several members thereof became duly qualified by giving the bond required by section 2 and taking the oath thereunder required, as appears by the files of this Department. The census required to be taken by section 1 was completed, and one of the duplicate lists thereof filed with the Secretary of the Interior on the 3d day of January, 1890, and the other with the official head of the band or tribe.

It appears by the report of the Commission that it sought and obtained the assistance of Bishop Whipple and Archbishop Ireland in its labors, and that all that was done was conducted in a spirit of fairness towards the Chippewas. There were distributed among them 500 copies of the act of January 14, 1889, and several hundred copies of the general allotment act of February 8, 1887.

Councils were held at Red Lake, White Earth, Gull Lake, Leech Lake, Cass Lake, Lake Winnibagoshish,

White Oak Point, Mille Lac, Grand Portage, Bois Forte and Vermillion Lake, and Fond du Lac.

At Red Lake the assent of all the Indians to the agreement was obtained except a few called "pagans," residing on the northern shore of the lake. The Indians at Red Lake complained of unfulfilled promises, pleaded for mills and cattle, and that their boundaries might be surveyed in accordance with treaties. They also prayed for an agent, as they were 80 miles from the White Earth Agency. The Red Lake Reservation, two-thirds of which at least is ceded to the United States, contains 3,200,000 acres, and the number of Indians occupying it is 1,168. The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are given in the report. The commisioners report that—

"This reservation is larger than will eventually be required, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotments shall be made."

Whether the surplus lands that may remain after allotments shall have been completed as required by the law can be disposed of without further legislation is a question which will require consideration, but such consideration is not necessary at this time.

The Indians on the Red Lake Reservation were suffering for want of food, owing to the loss of crops the last season.

The Indians of the White Earth Reservation were also suffering for food. They insisted upon the provisions of article 9 of the treaty of September 30, 1854,

and that damages should be paid because of the construction of reservoirs on the reservation near the headwaters of the Mississippi, provision for which had been made by the Northwest Commission three years ago, and which negotiations have not been acted on by Congress. No explanation could be given why the provisions of the treaty of September 30, 1854, had not been fulfilled, but the Indians were promised that the best efforts would be given to secure justice in this case, and upon these assurances the acceptance and signing of the propositions made were nearly unanimous. This mater is incorporated in the draught of a bill herewith presented for submission to Congress.

The White Earth Reservation contains 796,762 acres, and the number of Indians occupying the same is 2,044. They complain of want of milling facilities. They have about 5,000 acres seeded in wheat, barley and vegetables, but owing to want of rain not more than half a crop will be grown. At least 2,500 acres heretofore cultivated lies fallow for want of seed and teams.

There were but 277 Chippewas at Gull Lake, all of whom signed the agreement and agreed to make their permanent home on the White Earth Reservation as soon as they should be furnished with means to cultivate the soil and subsist until they could make a living.

At Leech Lake Reservation, amid pompous demonstrations, the Commission was received, and the first demand made of them was that there should be settle-

ment of outstanding claims. Nor was the business allowed to proceed until the Commission had given a solemn promise with raised hands that they would to their utmost ability urge the immediate settlement of these unadjusted demands. These Pillager Indians have a claim for lands ceded to the United States under the treaty of 1847, which it is urged should be carefully investigated, and the Pillagers allowed what may be found in equity due them, and also for damages arising from the construction of reservoirs at the headwaters of the Mississippi. For these damages it is recommended that there be paid $150,000, with 5 per cent. per annum to date, and $1.25 per acre for the overflowed lands. The Indians have absolutely ceded to the United States 46,920 acres, which cannot be sold, as provided in the act of January 14, 1889, for their benefit, and it is and must be reserved for the overflow caused by the reservoir dams. An item covering the claim for damages by reason of the construction of the dams is also incorporated in the inclosed draught of bill.

The alleged claim of the Pillagers for further compensation for land ceded under the treaty of 1847 is a matter for consideration by Congress, and I would recommend that it be brought to the attention of that body. The statement upon which this claim is based by the Indians is set forth in the report of the Commission.

At Cass Lake a like demand was made by the Indians for the settlement of unsatisfied demands, but all gave their assent and signatures to the proposition.

The Indians at Lake Winnibagoshish depend much upon their wild rice, which they were gathering at the advent of the Commission. The injury done them by the building of the reservoirs is very great. They are destitute, as are those at Cass Lake, of aid from the Government, having no missionary, school, farmer, blacksmith, or physician. The Commissioners observe that the Winnibagoshish Reservation is marked upon the map by township lines, which is erroneous, as the treaty fixes its line by natural boundaries beyond those shown by township lines. This has given much dissatisfaction, as the whites have settled between the two lines, and consequently upon the reservation, as the Indians claim. This marking is erroneous, and should be adjusted. All the adults of this band gave their consent to the agreement.

The condition of the Indians at White Oak Point is described as beyond hope of improvement, they being dissipated and dissolute, but they have still intelligence enough to ask that whisky may be kept from the country, and that missionaries and school teachers be sent them. They all signed the agreement, and it will be the purpose of this Department to supply and enforce so far as may be in its power the regulations so reasonably demanded. Scattered members of the White Oak Point bands were found at Kimberly, who were healthy in mind and body, unusually bright and careful of themselves, and all of whom were anxious to acquire lands in severalty and the young men eager to find work. They number one hundred, and all except one signed the agreement.

The Indians at Mille Lac were found to be intelligent, cleanly, and well behaved, and of good reputation among the neighboring whites. White men unfortunately have been permitted to rob them of their pine, and for years to settle upon their agricultural lands, to great injury and fear of the Indians. Squatters are now settling upon this reservation, as the commissioners report. The question of right should be settled at the earliest possible moment, for the greater the delay the more difficult will be the adjustment. All signed the agreement at this place.

The rights of the Indian upon this reservation have been a vexed question, full of difficulties and embarrassments, but it is hoped that this agreement will furnish a basis for its early and final solution.

At Grand Portage the Indians expressed themselves as fully understanding and satisfied with the terms of the act, and signed with cheerfulness and unanimity. They complained that the white fishermen spread so many large nets near their reservation that the Indians were unable to procure a supply of fish for food.

At Bois Forte and Vermillion Lake the Indians seemed timid and distrustful, but they "touched the pen" finally with great solemnity and much formality. They have the best hunting grounds of the Chippewas. They seem willing to learn to till the soil, but ask for assistance in the way of better facilities. Much of the land on the Lake Superior reservations is unfit for cultivation, and the Bois Forte Indians complain that a large amount of their timber is cut

without compensation, and is run down Little Fork River to the British Possessions.

Many of the Indians at Fond du Lac are in danger of suffering during the winter and spring, having been denied the right of cutting timber on their reservation. Like all of the Mississippi bands, they feel greatly grieved at the long-continued withholding of the money due them from the Government. On the positive assertion of the commissioners that justice should be speedily done, not only in this respect but in the matter of a palpable error in the boundary lines of their reservation, they were induced to listen, and finally signed by touching the pen.

This claim for additional land to which the Indians insist they are entitled under the plain and unmistakable meaning of the treaty should have careful consideration and be fairly and speedily adjusted.

The Commission reports:

"As the various bands decided to take their allotments on their respective reservations, the Commission told them that the $90,000 to be advanced and already appropriated would be paid pro rata as soon after the approval of these negotiations by the President as should be practicable, but not later than the coming spring."

The Commission further reports that—

"The clause of the act of January 14, 1889, providing for the payment of the interest that may accrue on the permanent fund, was to the Commission obscure, and they promised the Indians that cash payment should be made per capita in equal shares."

It is provided in section 7 of the act of January 14, 1889 (25 Stats., 642):

"That one-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares."

This construction by the Commission is deemed reasonable. While there may be some discussion possibly in regard to its validity, it is deemed that it is in harmony with the spirit of the act, and having been made the basis of the Indians' assent it should be adhered to.

The Indians desire that the Government will set aside a sufficient quantity of land on each reserve for Government buildings, such as may be necessary for physician, blacksmith, farmer, carpenters, and for missionaries, traders, etc. The commissioners recommend this, and the reservation, it is submitted, should be made, and the order as to the location and erection of such buildings should be enforced.

The reservation of the necessary and suitable tracts of land for these purposes can be made the subject of an executive order when proper selections shall have been made, which should be attended to before the lands are offered for disposal under the act.

The commissioners further recommend that on each reservation a tract of pine land should be reserved and held by the General Government as might be necessary for their common use, to be so held during the pleasure of the Secretary of the Interior.

I doubt whether this request for the reserving and holding by the General Government of a tract of pine land upon each reservation for the common use of the Indians remaining thereon can be complied with without legislative authority therefor, in view of the terms and conditions of the act to which the Indians have given their consent.

They ask for saw mills, cattle, agricultural and mechanical implements, which they must have, or they can make no substantial progress.

The commission reports that although the Indians have decided to take allotments on their reservations, it is believed that many may be induced to remove to White Earth, and for this reason it is not prudent to urge individual allotments elsewhere than on the White Earth and Red Lake Reservations at present.

The removal of those who will go to White Earth will take place as soon as provisions can be made for their subsistence. It will be of the greatest benefit to the Indians and to the State to have the removal made.

The Commission ask that there may be granted 10 acres of maple timber for making sugar to each family occupying the same. This is deemed ample, and is as much as should be granted. The matter should receive attention when the individual allotments are made to the Indians.

The commissioners state that it is important that the four townships of pine land on the White Earth Reservation should be early estimated and sold, as the timber is liable to be stolen or burned; while on the other hand the swamp lands of valuable cedar and tamarac should be withheld from sale under the pre-emption laws, and sold under the direction of the Secretary of the Interior, in such manner and upon such terms as to him shall seem best for their interests.

I fully concur in the suggestion of the commissioners, that the ceded lands of the White Earth Reservation already surveyed should be disposed of under the terms of the act, at as early a date as possible, but I do not see how the swamp lands referred to and reported to be valuable chiefly for cedar and tamarac can be withheld from sale as requested without further legislation in view of the last clause of section 4 of the act, which reads as follows:

"All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed 'agricultural lands.'"

And section 6 provides specifically the manner in which unallotted and unreserved agricultural lands shall be disposed of. I think, however, that this request of the Indians should receive favorable consideration by Congress, and that the necessary legislation should be had authorizing the reservation and disposal of the cedar and tamarac swamp lands as desired by the Indians.

It is reported and believed that upon Grand Portage, Bois Forte, and Vermillion Lake Reservations there are valuable mines, and the Indians request that if such are discovered they shall be disposed of by the Secretary of the Interior as best to subserve the interests of all concerned. I do not concur in the recommendations of the commissioners regarding the request of the Indians for the disposal of mineral lands. I cannot see how such a request can be complied with under the law.

The commissioners state that the pine ceded is estimated by various parties from $25,000,000 to $50,000,000.

It is reported by the commission that a further appropriation for surveys and examination of the lands will be necessary, and that a small appropriation should be used for the purpose of defraying the expenses of the Indians who may desire to visit the White Earth Reservation, with the expectation of removing there before allotments should be taken or confirmed elsewhere.

Section 8 of the act makes an appropriation of $150,000 "to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal, and allotments, and the first annual payment of interest herein contemplated and provided for." Ninety thousand of this sum is required to pay the first annual payment of interest, leaving but $60,000 for the other purposes specified. The commission has expended about $30,000 in procuring the cession and relinquishment, and making the census, leaving about

$30,000 for the surveys, appraisals, and for the removal and allotments provided for in the act. This balance is manifestly insufficient to enable the Department to accomplish these further provisions of the act, and I therefore concur in the recommendation that a further appropriation be made, and an item for that purpose is included in the draught of bill herewith submitted, which also provides for defraying the expenses of Indians visiting the White Earth Reservation.

The commission further remark that the Red Lake Indians should be encouraged to commence farming and building houses the coming spring, and furnished with cattle and implements, etc.

All these requests of the Indians and recommendations of the commission for furnishing mills, farming implements, cattle, buildings, etc., raise the question of an appropriation therefor, which requires to be carefully considered. Section 7 of the act provides the manner for the disposition of the interest on the proceeds arising from the disposal of the lands, as previously recited in this report. It is in said section further provided:

"That Congress may in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of $90,000 annually, counting from the time when the removals and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore pro-

vided for, shall equal or exceed the sum of $3,000,000, less any actual interest that may in the meantime accrue from an accumulation of said permanent fund; the payments of such interest to be made yearly in advance, and in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years, be expended in procuring live stock, teams, farming implements, and seed, for such of the Indians, to the extent of their shares, as are fit and desire to engage in farming; but as to the rest, in cash."

As the $90,000 already appropriated as first payment of interest was promised by the commission should be paid pro rata in cash, there is no fund out of which the mills, etc., can be purchased, unless Congress shall make an appropriation to enable the Department to provide these necessary and essential things so urged by the commission, and make such appropriation reimbursable from the principal sum arising from the disposal of said lands. An item for that purpose is embraced in the draught of bill herewith.

It is suggested that there are many persons of Chippewa blood dwelling in Michigan, Wisconsin, and elsewhere, but that the chiefs and headmen should be consulted as to the justice of their claims when they assert the right to the benefits under recent negotiations.

It will be perceived that some portions of the recommendations of the commissioners may be carried into effect through orders of this Department, and the same will be done to the extent possible; but, as to those matters dependent upon further legislation, the President will have to request action by Congress.

The chief of these will be to make such appropriations as will pay the demands of the Indians under previous treaties, and for the damages done by the reservoirs established upon the reservations. This matter has long been pending, and its adjustment seems to be demanded by ordinary good faith and the plainest principles of justice.

The $150,000 hereinbefore mentioned, recommended for the damages done by the overflow of the reservation dams, with 5 per cent interest, should no longer be refused.

There should be a due appropriation made, also, for the establishment of schools, and the employment of farmers, blacksmiths, and physicians, and particular provision made to preserve these Indians from want during the remainder of the winter and coming spring.

The first section of the act provides for an accurate census of each tribe or band, to be taken by the said commissioners while engaged in securing such cession and relinquishment, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans; giving the exact number of each class.

The commissioners submit census reports taken by them in the manner and form prescribed by the act, a summary of which is as follows:

SUMMARY OF CENSUS REPORTS.

	Total.	Adults.		Minors.		Orphans.	
		Male.	Female.	Male.	Female.	M.	F.
Red Lake and Pembina bands:							
Red Lake	1,168	308	359	287	247	15	7
Pembina	218	83	63	38	33	....	1
Total	1,386	386	422	275	280	15	8
Mississippi bands:							
White Earth	1,169	284	279	300	292	9	5
Gull Lake and scattering	277	61	75	49	89	1	2
White Oak Point	661	176	211	129	114	15	16
Mille Lac	895	213	289	180	204	6	3
Total	3,002	734	854	658	699	31	26
Pillagers and Lake Winibigoshish bands:							
Leech Lake	1,141	324	348	229	215	8	7
Otter Tail	657	164	180	154	158	....	1
Cass Lake	241	67	71	53	43	1	6
Lake Winibigoshish	169	45	50	34	33	3	4
Total	2,208	600	649	480	449	12	18
Grand Portage, Bois Forte and Fond du Lac bands:							
Grand Portage	294	73	85	60	71	2	3
Bois Forte	743	228	224	153	132	3	3
Fond du Lac	671	157	187	168	140	9	10
Total	1,708	458	496	381	343	14	16
RECAPITULATION.							
Red Lake and Pembina bands	1,386	386	422	275	280	15	8
Mississippi bands	3,002	734	854	658	699	31	26
Pillagers and Lake Winibigoshish bands	2,208	600	649	480	449	12	18
Grand Portage, etc., bands	1,708	458	496	381	343	14	16
Total	8,304	2,178	2,421	1,794	1,771	72	68

The commissioners also submit reports showing the number of male adults of each of the separate bands and the number of such male adults assenting to the act of which the following is a summary:

SUMMARY OF ADULTS ASSENTING.

	Male Adults.	
	Total.	Assenting.
Red Lake and Pembina bands:		
Red Lake	303	247
Pembina	83	77
Total	386	324
Mississippi bands:		
White Earth	284	270
Gull Lake and scattering	61	57
White Oak Point	176	172
Mille Lac	213	189
Total	734	688
Pillager and Lake Winibigoshish bands:		
Leech Lake	324	217
Otter Tail	164	144
Cass Lake	67	65
Lake Winibigoshish	45	40
Total	600	466
Grand Portage, Bois Forte and Fond du Lac bands:		
Grand Portage	73	72
Bois Forte	228	211
Fond du Lac	157	123
Total	458	406
RECAPITULATION.		
Red Lake and Pembina bands	386	324
Mississippi bands	734	688
Pillager and Lake Winibigoshish bands	600	466
Grand Portage, etc., bands	458	406
Total	2,178	1,884

This summary shows that the total number of male adults is 2,178, and that 1,884 of that number signed their acceptance and consent to the act, being over 86 per cent. of such male adults, and more than the requisite "two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to" each of the several reservations, and more than "two-thirds of the male adults of all the Chippewa Indians in Minnesota," as is required in the case of the Red Lake Reservation. (Section 1 of the act.)

The commissioners have not submitted their recommendations in separate form, and what is herein stated has been gathered from the general purport of their report, all of which will be more fully considered by the appropriate committees, with the view of doing complete justice to this tribe, which has reposed its confidence so firmly and fully in the Government and relied upon its justice.

It is provided in section 1 of the act authorizing negotiations "that all agreements therefor shall be approved by the President of the United States before taking effect."

The agreement or acceptance and consent of the Indians to the act, herewith, in ten parts, is therefore respectfully submitted for your action.

Before the ceded lands within any of the reservations can be disposed of as contemplated in the act, all of said ceded lands must be surveyed as the public lands are surveyed, after which they are to be carefully examined in 40-acre lots, by competent and experienced examiners to be appointed for that purpose, and classified into "pine lands" and "agricultural lands," the pine lands are then to be valued and listed, etc. (section 4), and finally proclaimed as in market and offered for sale in the manner prescribed in section 5.

The agricultural lands not allotted nor reserved for the use of the Indians, after having been surveyed, are to be advertised for thirty days and disposed of to actual settlers under the provisions of the homestead laws, each settler being required to pay $1.25 per acre for the lands so taken by him.

Besides all this it will be necessary to ascertain how many and who of the Indians of the several reservations elect to take allotments on the reservations where they now live, as by the terms of the act they are permitted to do, instead of being removed to White Earth Reservation (section 3). It is not seen how any of the ceded lands, except possibly those of the Red Lake Reservation and the four townships ceded in the White Earth Reservation, can be offered for sale or settlement until the Indians of the several reservations who elect to remain and take allotments where they are shall have signified their intention to so remain and shall have made their individual selections for allotment; nor can the Red Lake ceded lands be so offered until the surveys, examinations, classification, etc., shall have been fully completed.

Your approval, therefore, of the agreement will not open any of the reservations to white settlement, nor render them subject to occupancy or disposal in advance of the complete fulfillment of the preliminary work of surveys, examinations, etc., and in the case of the "pine lands," after all these preliminaries have been met, the lands must be "proclaimed as in market and offered for sale."

It is perhaps unnecessary, then, that any action should be had at this time other than the approval of the agreement.

Adverting here to the recommendation of the Commission that the Indians of the Red Lake Reservation be allowed to utilize the dead and fallen timber upon their reservation until such time as the survey, ap-

praisement, etc., shall be made, I think this is reasonable, and it seems to me can be done under authority conferred by the act of February 16, 1889 (25 Stats., 673), which provides:

"That the President of the United States may from year to year in his discretion under such regulations as he may prescribe, authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell, or otherwise dispose of the dead timber, standing or fallen, on such reservation or allotment for the sole benefit of such Indian or Indians."

Under the authority thus conferred, the President, on October 16, 1889, authorized the Indians on the White Earth, Red Lake, and White Oak Point Reservations to cut and sell dead and down timber on their respective Reservations, and I see no reason why the cutting and sale of the dead and down timber under the authority so granted and the regulations then prescribed may not be continued until the lands are placed upon the market as provided in the Chippewa act of January 14, 1889.

I invite attention to the fact that the instruments presented by the Commission as the result of the negotiations, and as the evidence that the Chippewa Indians in Minnesota have given their consent in writing to the cession and relinquishment of their title and interest in and to the lands as therein set forth, comprise ten parts, marked separately as A, B, C, D, E, F, and H, G, I, K, and L; these, however, in fact constitute as a whole one instrument, and the part marked C, and entitled "Signatures Roll Mississippi Chippewa Indians, White Earth Reservation, Minne-

sota," should be placed and considered as the first part, for the reason that it is the only part that embraces the text of the act under and for the purposes of which the Commission was appointed.

This is considered necessary, in view of the fact that the act is not recited in the other parts of the instrument, but is referred to therein as follows: "Which said act is embraced in the foregoing instrument," meaning evidently that part marked C, etc., as above stated.

With this as explanation, and as matter of record for proper understanding of the instruments, I think it would nevertheless be well for the approval of the President to be indorsed upon each of the separate parts of the said instrument.

I further recommend that a copy of the report of the Commission, and of all its accompanying papers (except the census rolls, which are bulky), with copy of this letter of the Department reviewing the same, be submitted to Congress for its information, together with the accompanying draft of bill for making the appropriations herein suggested.

I have the honor to be, very respectfully, your obedient servant,

JOHN W. NOBLE,
Secretary.

A BILL to enable the Secretary of the Interior to carry out an act, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota, approved January 14, 1889," and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums, or so much thereof as may be necessary be, and the same are hereby, appropriated out of any moneys in the Treasury, not otherwise appropriated, to be immediately available, to enable the Secretary of the Interior to carry out an act entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota, approved January fourteenth, eighteen hundred and eighty-nine, and for other purposes.'

For amount due the Chippewa Indians of Lake Superior and Mississippi, arising from balances of appropriations under treaties with said Indians, and covered into the Treasury between the years eighteen hundred and forty-three, and eighteen hundred and seventy-eight, inclusive; also, the aggregate difference between the coin value of payments made in currency during the years eighteen hundred and sixty-three and eighteen hundred and sixty-four, at the dates of Treasury warrants, and the amounts due in coin by treaty stipulations, with interest at the rate of five per centum per annum, from the date of said Treasury warrants to June thirtieth, eighteen hundred and ninety, the sum of one hundred and ninety thousand dollars, or so much thereof as may be required, to be expended by the Secretary of the Interior in the purchase of such articles as he may deem best, or in the payment of cash, to be apportioned in accordance with article eight of the treaty proclaimed January twenty-ninth, eighteen hundred and fifty-five, one hundred and ninety thousand dollars.

For compensation for losses and damage sustained by the Chippewa Indians on account of the building of dams and reservoirs on Lake Winnebagoshish, Cass Lake, and Leech Lake, the sum of one hundred and fifty thousand dollars, with interest at the rate of five per centum per annum from the seventeenth day of September, eighteen hundred and eighty-six, up to and including June thirtieth, eighteen hundred and ninety, the sum of one hundred and eighty thousand

dollars, or so much thereof as may be necessary, to be paid in cash, per capita, in two yearly installments as follows: Two-thirds to the Pillager and Lake Winnebagoshish bands, now residing or entitled to reside on the Leech Lake, Lake Winnebagoshish, and Cass Lake Reservations, and one-third to the Mississippi band, now residing or entitled to reside on the White Earth, White Oak Point, and Mille Lac Reservations, one hundred and eighty thousand dollars.

For compensation for forty-six thousand nine hundred and twenty acres of land at one dollar and twenty-five cents per acre, on account of land overflowed in the construction of dams and reservoirs on Lake Winnebagoshish, Cass Lake, and Leech Lake Reservations, to be divided in the same manner as the compensation for losses and damages above referred to, and to be paid in cash, per capita, fifty-three thousand six hundred and thirty dollars.

For the purchase and erection of saw and flour mills, agricultural implements; for surveys, appraisals, removals, and allotments; for payment of expenses of delegations of Chippewa Indians to visit the White Earth Reservation; for the erection and maintenance of day and industrial schools, for subsistence and pay of employes, and for such other purposes as the Secretary of the Interior may deem proper, the sum of two hundred and fifty thousand dollars; *Provided*, That this amount shall be reimbursed to the United States from the proceeds of sales of land ceded by the Chippewa Indians under the act of January fourteenth, eighteen hundred and eighty-nine, two hundred and fifty thousand dollars.

Sec. 2. That the Secretary of the Interior is hereby authorized and directed to pay per capita, to the Chippewas entitled to it, under the act of January fourteenth, eighteen hundred and eighty-nine, the sum of ninety thousand dollars, appropriated by section eight of said act of January fourteenth, eighteen hundred and eighty-nine (Statutes 25, page 645), as first annual payment of interest contemplated and provided for, in lieu of expending it in conformity with the provisions of the above-mentioned act of January fourteenth, eighteen hundred and eighty-nine."

Department of the Interior,
Office of Indian Affairs,
Washington, January 2, 1890.

Sir: Agreeably with your personal request, the 31st ultimo, I have the honor to transmit herewith the final report (in triplicate) of the Commission appointed to negotiate with the different bands or tribes of Chippewa Indians in the State of Minnesota, under authority of the act of January 14, 1889 (25 Stat. 642), together with the several agreements entered into, the census of the Indians, and the proceedings of the several councils held with them.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The Secretary of the Interior.

United States Chippewa Commission,
St. Paul, Minn., December 18, 1889.

Sir: We have forwarded to your Department by express, December 16, 17, and 18, one copy of the census taken by the Commission of the Chippewa Indians of the State of Minnesota; two copies of the stenographic record of proceedings in the councils held with them by the Commission; one copy of the agreements with the bands in the State, with the original signatures of the Indians attached; and inclose herewith one copy of a summarization of the census, and one copy of a summary showing the num-

ber of male adults in the various bands and the number of those who signed the agreements.

I shall be obliged if the receipt of the various papers is acknowledged. Respectfully,

HENRY M. RICE,
Chairman.

Hon. T. J. Morgan,
Commissioner of Indian Affairs,
Interior Department, Washington, D. C.

United States Chippewa Commission,
St. Paul, Minn., December 26, 1889.

Sir: In obedience to instructions from your office, dated May 24, 1889, accompanied by "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889, this Commission met in this city June 11, 1889. After several meetings, it was deemed proper, owing to the deep interest the Right Reverend Bishop Whipple, and his grace Archbishop John Ireland, had taken in the welfare of the Chippewas, that they should be consulted. A copy of the following note was addressed to each, dated June 15, 1889:

"Dear Sir: Your church has missions established among the Chippewa Indians in the State of Minnesota, with whom we are instructed to negotiate.

On account of the intimate knowledge you have, and the deep interest you have manifested in the elevation of this race, we deem it proper you should be represented, and it will be a pleasure to the members of this Commission to have with us some one delegated by you who may explain to the Indians any

matters affecting their interests, which may be presented to them."

In response to this invitation, Bishop Whipple selected Rev. E. S. Peake, who had long resided with these Indians, and Archbishop Ireland selected the Rev. Father Aloysius, O. S. B., a resident priest among them, both of whom accompanied us to Red Lake.

That nothing should be omitted that could enlighten the Indians as to the intent of the Government, we had printed 500 copies of the act of January 14, 1889, and several hundred of the "Act to provide for the allotment of lands in severalty to Indians," etc., approved February 8, 1887. These we caused to be distributed among the missionaries, teachers, and other employes of the Government, as well as traders, mixed bloods, and Indians who read the English language.

Owing to their destitute condition, the Indians were scattered in search of food, their crops having failed the previous season, and much time was taken in collecting them.

The first council was held at Red Lake, June 29, where we remained until July 8. We found them intelligent, dignified, and courteous, but for several days indisposed to give a favorable hearing. The propositions were not as favorable as those made three years ago, which did not require the proceeds of their reservation to be shared with others. The chiefs were opposed to breaking up the tribal rela-

tions, fearing that if they were so broken their power and influence would be gone. The young men, however, were heartily in favor of the allotment plan, knowing that if their lands were held in severalty, each man's earnings could be used for his own advantage, instead of, as heretofore, being necessarily shared with the idle, but they did not like the provision for providing with other bands, although when it was explained to them that the country from Lake Superior to and beyond the Red River of the North was, by the united efforts of all the Chippewas, taken by conquest from the Sioux, and that had it not been for such united efforts, they could not have taken or held the Red Lake Reservation; they admitted the correctness of this statement, but thought some of their neighbors had received more than their due proportion of annuities from former sales.

Among themselves, boundary lines were not very strictly regarded, as those of one band intermarried with and joined such other band as was most agreeable; in fact, the young men roamed about at will. The Chippewas of this State did unquestionably, in early times, hold their lands in common. It was so in 1825, at the time of the treaty at Prairie du Chien, and no other idea would ever have been entertained had not the mistaken policy of purchasing a tract here and there from the bands contiguous thereto been adopted. Of the vast cessions heretofore made, there is little, and in many cases nothing, left to show any benefit derived by the Indians therefrom.

This is owing largely to the hurtful practice, so long followed, of permitting their tribal relations to exist.

As a result of the reverence the young men have for their chiefs, they would not speak in council, but a delegation called upon the Commission after adjournment and requested it should have patience, as they had resolved to have a council among themselves, in hope of influencing their leaders, and if successful they would continue to keep in the background. They clearly saw the advantage to them of the propositions made, including the offer of the protection of the law. Their efforts were successful, and all of their bands cordially gave their assent by signing the agreement, except a few called pagans, residing upon the north shore of the lake; their head chiefs and others, however, said they had no objections, and would sign when "they saw fulfilled the promises made." We found them very poor, having comparatively nothing to work with, not even farming implements. Years ago they had a saw-mill, but from neglect, when a small expenditure would have kept it in repair, it was permitted to go to decay. So for years they have not had lumber to build new or repair old structures, or even make a coffin. They earnestly plead for a saw-mill; and also cattle and such other helps as would enable them to commence at once to improve their condition.

They claim, and we think with at least the appearance of truth, that their boundary as surveyed is not in accordance with the treaty lines. We recommend

that an engineer of repute be employed to examine and report the facts.

They earnestly asked that they might be permitted to utilize the dead and fallen timber upon the reservation until such time as the survey and appraisal shall be made. As this will be of great help to them and the trees will otherwise be destroyed by fire, worms, and rot, we agreed to support this most reasonable request.

They also begged that they might have an agent, as this reservation is so far (80 miles or more) from the White Earth Agency.

We think the Red Lake Indians, if properly aided, will become self-supporting and useful citizens.

The Red Lake Reservation, which they cede to the United States, contains 3,260,000 acres. The number of Indians occupying the same is 1,168.

The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are as follows:

"Commencing at Thief River at a point on the dividing line between Marshall and Polk Counties, as designated on a map published by Rand, McNally & Co., of Chicago, in 1888; thence easterly to a point on the northwesterly shore of Upper Red Lake; thence along the northern shore of said lake to a point due north of a point 1 mile due east from the eastern end of the Lower Red Lake; thence southwesterly to a point on Hay Creek 1 mile from its mouth; thence due south to a point due east of a due westerly line which when extended will run between what is known as the most southerly sugar-bush on Red Lake road to White Earth, and north of what is called the "Big Marsh" to Clearwater River (said line being about 6 miles south of Red Lake); thence down

Clearwater River to the southwesterly reservation line; thence along said line to the place of beginning (excepting the right to use in common all the waterways within the above described limits.)"

This is larger than they will eventually require, but as there are swamps and other untillable lands therein, it cannot be reduced until after survey and allotment shall be made.

White Earth Reservation, occupied by the Chippewas of the Mississippi, Pembinas, and Otter Tail Pillagers, contains 796,672 acres, of which they cede to the United States four townships of pine land, viz.: Townships 143, 144, 145, and 146, range 37 west. Residing on this reservation are Chippewas of the Mississippi, 1,169; Otter Tail Pillagers, 657; Pembinas, 218.

The first council was held at White Earth July 17, and the last on July 29. As with the Red Lake Indians, they were suffering for want of food, owing to the loss of their crops by early and severe frosts the season before. All were strenuously opposed to entertaining any propositions until the provisions of article 9, of the treaty of September 30, 1854, made at La Pointe, Wis., was fulfilled, and a settlement had for the damages to their reservation near the headwaters of the Mississippi, caused by building the reservoir dams; provision for an adjustment in each case was made by the Northwest Commission three years ago in negotiations with them and the Leech Lake Indians, which negotiations have not been acted upon by Congress.

In regard to the treaty of September 30, 1854, it was impossible for us to explain why its plain and unquestioned provisions had not been fulfilled. The Chippewas employed an agent, and a delegation accompanied him to Washington some years ago, and after urgently insisting upon a settlement, there was found due to them the sum of $118,400, which had accrued from balances that had been covered into the Treasury between the years 1843 and 1878. This amount has never been questioned as being due under the treaty stipulations, and in the opinion of this Commission should be included in regular estimates. We gave the most solemn promises that our best efforts would be given to secure justice in this case, believing that we but voiced the intent of the Government in so doing. After giving assurances that justice would be speedily done and that we would bring the attention of the Department to those claims, the acceptance and signing of the propositions made was nearly unanimous.

The following will show that the Indians had been officially informed of the amount due them up to and including the year 1878. (Two-thirds of this amount goes to the Chippewas of Lake Superior, and one-third to those of the Mississippi.)

"Office of Indian Affairs,
Washington, December 8, 1884.

Sir: I am in receipt of your letter dated the 29th ultimo, in which you state that four years ago you were called to this city to converse on matters concerning your reservation; that while here you were

informed that there was due to your people the sum of $118,400; that said sum would be paid in annual installments; that 50,000 thereof was drawing interest, and that said interest would be paid to the Chippewas.

You want to know why these promises have not been kept, and that you be informed in brief what you are to expect, etc.

In reply I have to state that on the recommendation of this office, on the 5th day of April, 1880, a bill was introduced in Congress to authorize the Secretary of the Interior to fulfill certain treaty stipulations with the Chippewa Indians of Lake Superior and Mississippi. This bill proposed an appropriation of the sum of $118,406.29, being the total amount arising from balances of appropriations under treaties with said Indians and covered into the Treasury between the years 1843 and 1878, inclusive. And the aggregate difference between the coin value of payments made in currency during the years 1863, 1864, and the amounts due in coin by treaty stipulations with interest at 5 per cent. per annum, from date of Treasury warrants to February, 6, 1880.

Section 2 of this bill provided that of the above amounts $38,400.29 should be paid to the said Indians and that the remainder, $80,000, should remain in the Treasury to draw interest at 5 per cent., said interest to be paid annually per capita or expended for the benefit of the Chippewas, under the direction of the Secretary of the Interior.

This bill never became a law through the failure of Congress to take action, and this office has exhausted its endeavors to obtain the appropriation named.

Very respectfully,

H. PRICE,
Commissioner.

Ah-ke-wain-ze, Head Chief of Lac Courte D'Orielles.
(Care United States Indian Agent, La Pointe Agency, Wis.)"

See also the speech of Hon. Jacob H. Stewart, of Minnesota, in the House of Representatives, delivered Monday, February 24, 1879, on the bill (H. R. 6471) making appropriations for civil expenses of the Gov-

ernment for the fiscal year ending June 30, 1880, and for other purposes, as printed in the Congressional Record, March 1, 1879, under "Sundry Civil Appropriation Bill." The speech referred to contains the report of the committee upon this subject.

Messengers are now out, sent by the Chippewas of Lake Superior to those of the Mississippi, inviting them to send delegates to meet in convention at Ashland, Wis., on January 11 next, for the purpose of employing claim agents to prosecute and collect the amount found due, to, and including the year 1878, as stated by the Indian Office, April 5, 1880, viz., $118,400, with interest to date at 5 per cent., $59,200; total, $177,600.

The claim agents expect the Indians to allow them 15 per cent. of the amount. It can but be detrimental to the Indians to be thus harassed, kept in suspense, and finally compelled to pay to others a large commission in order to secure the payment of a just claim against the Government.

These Indians have an old saw-mill, but for want of repairs it cannot be used.

Their flouring-mill, not being properly cared for, was burned a short time ago, but for want of repairs had not been running for several years. Consequently the Indians such as had grain have been compelled to go many miles to have it ground.

When in the settlements of the whites, to say nothing of the expense and loss of time, they are subject to unavoidable temptations. Many have not teams and have to employ others to take their grain to the

mills, and after paying transportation and toll, leaves but a moiety for their use. The Indians made special complaints in regard to the want of milling facilities. At their request, with the aid of Agent Schuler, we investigated the condition of their farms, and found about 5,000 acres seeded in wheat, oats, barley, and vegetables, but owing to the want of rain not more than half a crop will be grown. At least 2,500 acres heretofore cultivated lies fallow for the want of seed and teams.

Here, as well as at Red Lake, Rev. Mr. Peake rendered valuable services.

After completing our work at White Earth we went to Gull Lake, where we found a small band, numbering 277, belonging to the Chippewas of the Mississippi. Some of them had attended the councils at White Earth, and all seemed familiar with the propositions submitted to them. We, however, went through with the explanations in detail, and after consultation among themselves all signed the agreement. They promised to make their permanent home on the White Earth Reservation as soon as they should be furnished with means to enable them to cultivate the soil and to subsist until they can make a living. This agreement was concluded on the 5th of August.

We held the first council at Leech Lake, August 8. We were received at this place with all the pomp and show the Indians could display. Guns were fired and every flag in the settlement was flying. A guard

of honor, dressed in war feathers and decorated with paint, greeted us with open arms. We were informed that this guard was for our protection, especially to keep the Pillagers from giving us any personal annoyance. Faithfully did they perform their duty, not only by day but by night. No Indians were permitted to see us unless accompanied by a detail from this polite and considerate guard, which was master of the situation. The party that originated and organized this body, knowing the object of our mission from the copies of the act we had sent in advance, as well as from persons of their own band who had attended the councils at Red Lake and White Earth, were fully determined that no business should be transacted between the band and the Commission until they should be satisfied that it had the authority to provide for the settlement of outstanding claims. They were polite and courteous, but were resolved to keep us, as well as the uncertain of their band, under the restraint of the guard. They felt that they had been grievously wronged.

After a few days we broke their lines, inducing the chiefs to speak in council who for several days had not been heard. Stormy debates took place in council, accompanied by threats, which afterwards, at the request of the chiefs, the commission directed to be stricken from the minutes.

These Indians, even the most bitterly opposed, said that had we come empowered to adjust unsettled matters they would not have made any objections to the

propositions, nor would they have detained us long. Enough, however, gave their consent as required in writing. Others said that they would assent when they saw a disposition on the part of the Government to right the wrongs they had suffered. We were kept there until August 22. We had to give a solemn promise with raised hands that we would to our utmost ability urge the immediate settlement of unadjusted claims.

On the 21st of August, 1847, the Pillager Indians at Leech Lake, Minn., ceded to the United States a tract of land bounded as follows:

"Beginning at the south end of Otter Tail Lake; thence southerly on the boundary line between the Sioux and Chippewa Indians, to Long Prairie River; thence up said river to Crow Wing River; thence up Crow Wing River to Leaf River; thence up Leaf River to the head of said river; and thence in a direct line to the place of the beginning."

This tract contains nearly 700,000 acres, and was sold to the Government for about $15,000. The Pillagers parted with it, believing, as they were told, that it was for the occupancy of the Menomonee Indians, a tribe at peace with them as well as with the Sioux. For generations a fierce war had raged between these two last-named tribes. The Pillagers believed that if the friendly Menomonees were between the belligerents peace might follow. By the treaty of October 18, 1848, the United States ceded to the Menomonees the above described tract in exchange for all their lands in the State of Wisconsin.

The Menomonees, manifesting a great unwillingness to remove west of the Mississippi, by treaty dated May 12, 1884, receded to the United States the foregoing tract in exchange for a part of their old home in Wisconsin and the sum of $242,686, for which the Pillagers received less than $15,000. According to Indian reasoning the consideration stipulated was never paid; that is, the occupancy of said tract by the Menomonees, thus protecting them from the incursions of Sioux war parties.

The Pillagers, at the time of the cession, were told by the commissioners that the said tract would be held as Indian lands are usually held, and that their friends, the Menomonees, would occupy it. The commissioners were Isaac A. Verplank and Henry M. Rice. The Pillagers from the time that they heard that the tract was not to be occupied by the Menomonees, as stipulated, have to this day considered that they have been injuriously overreached. They have never ceased to complain of this, and never will until reparation shall be made. We cannot too strongly urge that the Government cause this matter to be carefully investigated, and in some way allow the Pillagers what may be found to be in equity due them. Indians are not unreasonable when fairly dealt with, and as they are about starting out as citizens under this act, aid will be of greater benefit now than heretofore, and is more needful now than it can be at any future time.

As to the damage done by the overflow of the reservoir dams, the Department is respectfully referred to the following communication:

(House of Representatives, Forty-eighth Congress, first session, Ex. Doc. No. 76.)

"Department of the Interior,
Office of Indian Affairs,
Washington, December 19, 1883.

Sir: By a provision in the river and harbor act of June 14, 1880 (21 Stat., 193), the sum of $75,000 was appropriated for the reservoirs at the headwaters of the Mississippi River, to be used in the construction of a dam at Lake Winnebagoshish, with the proviso that all injuries occasioned to individuals by overflow of their lands shall be ascertained and determined by agreement, in accordance with the laws of Minnesota, and shall not exceed in the aggregate $5,000, etc.; and by a provision in the river and harbor act of March 3, 1881 (Id., 481), the sum of $150,000 was appropriated for reservoirs upon the headwaters of the Mississippi River and its tributaries, and the Secretary of the Interior is authorized and directed to ascertain what, if any, injury is occasioned to the rights of any friendly Indians occupying any Indian reservation by the construction of any of said dams, or the cutting or the removal of the trees or other materials from any such reservation for the construction or erection of any of said dams, and to determine the amount of damages payable to such Indians therefor, which damages, when determined, to be paid by the United States, with the proviso that such damages shall not exceed 10 per centum of the sums hereby and heretofore (act 1880, $75,000) appropriated for the construction of said reservoirs.

Under these provisions of law Messrs. A. Barnard, of Minneapolis, Thomas Simpson, of Winona, Minn., and Louis Morel, of this office, were designated by the Department, on the 11th of August, 1881, as special agents to ascertain the injury occasioned to friendly Indians by the construction of the reservoirs at Lake Winnebagoshish and Leech Lake, and to determine the amount of damages payable to such friendly Indians as might suffer on account of the construction

of said reservoirs; and on the 20th of August the necessary instructions were issued to said agents, defining their duties, and the manner of proceeding to ascertain and determine the damages resulting to friendly Indians.

On the 6th of October, 1881, these agents submitted their findings and award, which was submitted to the Department on October 18, following, for consideration, and, if approved, to be forwarded to the Secretary of War for settlement under the act of 1881.

The injuries arising from the construction of these reservoirs and the assessments of damages to friendly Indians were considered by these agents and reported in separate schedules, one for Lake Winnebagoshish and the other for Leech Lake, being classified as (1) injuries to individual property, and (2) injuries to tribal property.

The damages were, in the aggregate, at Lake Winnebagoshish, assessed at $8,393.30, and those at Leech Lake, $7,073.60.

These valuations, amounting jointly to $15,466.90, were approved by the Department and forwarded to the War Department, and the money was placed to the credit of the Interior Department for distribution under the award.

The Indians protested against this assessment as being entirely too small, and at one time there was danger of a serious outbreak, but the violence was prevented by the friends of the Indians, with the hope that the question of damages would be reconsidered.

These facts having come to the knowledge of the Department, it was determined to appoint a new commission to assess the damages, and on December 23, 1882, you appointed and commissioned for that purpose General H. H. Sibley and William R. Marshall and Rev. J. A. Gilfillan, who were to serve without compensation other than their necessary expenses. Subsequently General Sibley, on account of ill health, resigned, and R. Blakeley, Esq., was appointed to fill his place.

I am now in receipt, by Department reference, of the report of these gentlemen, dated the 4th instant, submitting in detail the result of their findings. They state that it was entirely out of the question for the commission to arrive at a reasonable agreement with the Indians as to the amount of damages by the rea-

son of the construction of the dams; and that the amount of land overflowed has been materially reduced, as indicated in letter of Major Allen, of October 24, 1883, the amount being only 46,920 acres, instead of 101,940 acres, as heretofore reported, and in the aggregate is divided as follows, viz.:

Winnebagoshish reservoirs, 23,240 acres; Leech Lake reservoirs, 28,680 acres.

The commission make awards for timber cut, rock taken, and damages to industries, but none for land taken.

Their award is as follows, viz.:

Lake Winnebagoshish and Cass Lake:	
Personal property	$1,936.50
Tribal property	3,649.58
	5,586.58
Leech Lake:	
Personal property	105.00
Tribal property	1,075.00
	1,180.00

White Earth and Mississippi bands, pine cut, $3,272.10.

The Commission estimate for these latter bands an annual damage for rice, at 10 cents per pound, $8,610, and for hay, at $28 per ton, $9,800; total, $18,410.

For the Indians at Lake Winnebagoshish and Cass Lake they estimate the annual damage as follows, viz.:

Hay	$3,640.00
Loss of fish	4,350.00
Loss of cranberries	300.00
Loss of sugar	100.00
Total	8,390.00

The Commission say that the Indians will be very materially damaged in their industries, and will require permanent provision. The total damage awarded by the Commission, outside of resultant damages, is as follows, viz.:

Individual property	$2,041.50
Tribal property	7,996.68
Total	10,038.18

The total annual damage awarded by them is $26,800.

The estimate of the Commission for annual damages for rice at 10 cents per pound, and hay at $28 per ton would appear at first sight to be rather extravagant, but when we consider that over 46,000 acres of land are taken from the Indians without any compensation whatever, it is believed that the estimate is not too high.

There are funds now at the disposition of this Department, under the act of 1881, sufficient to pay the damage awarded for individual and tribal property, $10,038.18, but as the Indians refused to accept the award in this respect of the former Commission, which is some $5,000 greater than that of the present Commission, they will hardly accept the latter unless an appropriation is made to pay the annual damages awarded by the latter Commission.

In accordance with the award of the Commission it will require $36,838.18 for present payment, of which amount, as before stated, $10,038.18 is available, leaving $26,800 to be provided for.

As the acts of 1880 and 1881 make provision for payment of present damages only and none for the payment of annual damages, I am of opinion that this sum for the present year should be treated as a deficiency, and recommend that Congress be asked to attach an item to the deficiency bill, already submitted by this Department, appropriating the sum of $26,800, and that annually hereafter an appropriation of $26,800 be made in order to carry out the award of the Commission.

Very respectfully, your obedient servant,

H. PRICE, Commissioner."

The Secretary of the Interior.

It appears by this that the award, amounting to $15,466.90, was without hesitation rejected by the Indians. Is it surprising that they should have done so, when the United States engineer, Major Allen, reported that the number of acres overflowed amounted to 46,920, which overflow destroyed their gardens, their rice fields, their hay lands, their fish, and their

graveyards? It is an annual and perpetual loss. The award did not allow 40 cents an acre for the land, to say nothing of the damages occasioned by the loss of their almost sole subsistence.

On December 22, 1882, a new commission, consisting of General and Ex-Governor William R. Marshall, Capt. R. Blakeley, and Rev. J. A. Gilfillan, was appointed; practical, thorough-going men, in whose judgment every one had confidence. After a careful and exhaustive examination these gentlemen estimated the annual damages at $26,800, and the damages to individual and tribal property at $10,038.18.

The Commissioner of Indian Affairs then approved of this award. He said:

"In accordance with the award of the Commission it will require $36,838.18 for the present payment, of which amount, as before stated, $10,038.18 is available, leaving $26,800 to be provided for; and that annually thereafter an appropriation of $26,800 be made, in order to carry out the award of the Commission."

The Secretary of the Interior, in approving of the foregoing, says:

"No award is made by the Commission for or on account of the land taken and occupied in the construction of the reservoirs."

By the fourth article of agreement made by the Northwest Indian Commission (not acted upon by Congress) on the part of the United States and the Pillager Indians, it was agreed that the United States would pay said Indians $150,000, which should be in full satisfaction for losses and damages sustained by

them, one-third of said sum to be paid to the Chippewas of the Mississippi, and two-thirds to the Pillagers, etc., from which agreement they never heard until informed by us.

From information received on this subject, this Commission cannot recommend a less award than the amount mentioned, viz., $150,000, with 5 per cent. interest per annum to date, and $1.25 per acre for the overflowed lands. These Indians have absolutely ceded to the United States 46,920 acres, which cannot be sold as provided in the act of January 14, 1889, for their benefit, as it is and must be reserved for the overflow caused by the reservoir dams.

From Leech Lake we went to Cass Lake, holding our first council there August 23, and the last on the 26th of the same month. As many of the Indians of this band attended all the councils at Leech Lake, all they required was that explanation should be made to those who were not present at the latter place. They in strong terms asked that unsettled matters be liquidated as soon as possible. All freely gave their assent and signatures to the propositions.

From there we went to the Lake Winnebagoshish band. We had much trouble in assembling them, as they were out gathering wild rice. Our first council was held August 31, and the last September 2, but we were in almost constant session day and night, as they were anxious to return to their rice fields. Several of the chiefs had attended the councils at Leech Lake, and seemed well informed of the object of our visit. The injury done them in building the reservoir

dams was without doubt very great. Two or three of their burying grounds were so washed by the overflow that the remains of their buried dead were unearthed and scattered along the shore. This desecration but added poignancy to the sorrow caused by the loss of subsistence.

Here, as at Cass Lake, they felt deeply hurt that those who were in the greatest want—the old, the sick, and the helpless young—should have been compelled to appear in person at Leech Lake when their annuities were paid or go without them. This harmful practice could be easily avoided by paying to the representatives of such, with the approval of the chief, the amount due. These Indians, like those of Cass Lake, are destitute of aid from the Government, having no missionary, school, farmer, blacksmith, or physician. The Winnebagoshish Reservation is marked upon the map by township lines, which is erroneous, as the treaty fixes its line by natural boundaries beyond those shown by township lines. This has given much dissatisfaction, as whites have settled between the two lines, and consequently upon the reservation, as the Indians claim. The matter should be adjusted. Every adult male of the band gave his assent to the agreement.

On September 5 we held a council with a part of the White Oak Point Indians at Payment Point; on the 6th at White Oak Point, and on the 7th near Grand Rapids. Most of these Indians showed such signs of dissipation and consequent degradation as would lead one to fear they were beyond the hope of

improvement. They seemed aware of their condition, and tremblingly asked that whisky might be kept from the county. They also asked that missionaries and school teachers be sent them. They seemed like lost wards of the Government, who had fallen into the hands of their worst enemies, the whisky sellers. All present gave their signatures.

From the last point we sent our messengers to find the scattered members of other White Oak Point bands, and succeeded in gathering them at Kimberly, a water tank station on the Northern Pacific Railroad, where we held the first council September 19, and our last on the 23d. The two leading chiefs had attended the councils at White Earth, and had made known to their people the object of our mission. We found these people healthy in body and mind, unusually bright, and careful of self. All were anxious to acquire land in severalty, and the young men were eager to find work. Their very appearance indicated a working and industrious class. They said they had been forced to look for subsistence outside of their reservation. Their bands numbered one hundred men. All except one signed the agreement.

On the 2d of October we met the Mille Lac Indians, and were with them until the close of the 5th, and almost constantly in council.

Contrary to the general opinion, we found them intelligent, cleanly, and well behaved. Their neighboring white settlers gave them a good name. Some who had been on these borders for many years said they had never been molested in person or property by

them. Upon this reservation there are a large number of whites, who have made claims thereon, and even many of these testified to the harmless conduct of the Indians. Their principal fault seems to lie in possessing lands that the white man wants.

This reservation was set aside for their use by treaty of February 22, 1855, and was guaranteed as their permanent home. By this treaty land was to be plowed and prepared for cultivation. As a sample of injustice to them we were told that the land had been plowed several miles north of their reservation, and not a foot for their use thereon. To satisfy ourselves of this, we visited the place designated (lots 1 and 2, section 13, township 44, range 28 west) and ascertained from the then occupant, a very respectable citizen by the name of Dinwiddie, that his farm embraced the improvement mentioned, which had been made before he purchased.

By the treaty of March 11, 1863, this reservation was ceded to the United States, but by a proviso in article 12 it was stipulated—

"That owing to the heretofore good conduct of the Mille Lac Indians they shall not be compelled to remove so long as they shall not in any way interfere with or in any manner molest the persons or property of the whites."

By article 4 of same treaty it was agreed that the United States should clear and stump and grub and break for the Mille Lac band, upon said reservation 70 acres of land, which confirmed the belief that they were not only permanently located, but had the sole occupancy of the reservation.

In the treaty of May 7, 1864, which was intended to supersede the one last alluded to, article 4 makes the same stipulation as to the breaking of 70 acres of land, and by article 12 a promise as to their living thereon, the same as provided by the treaty of March 11, 1863.

The Interior Department now holds that—

"The Mille Lac Indians have never forfeited their right of occupancy and still reside on the reservation."

But, notwithstanding this, white men have been permitted to rob them of their pine, and for years to settle upon their agricultural lands, and there to remain in quiet possession to this day to the great injury and fear of the Indians. Some of the whites had the shameless audacity to take from the Indians land the latter had, with much labor and perseverance, put into cultivation. Squatters are now settling upon this reservation, and the interest of the Indians ignored.

There are many persons upon the Mille Lac Reservation who went there believing that they had a right so to do. They were induced to believe so by the action of persons who not only sought the rich pine forests thereon, but actually secured, as is believed, patents to many acres thereof. It is possible matters can be so arranged as to give in some way protection to the well intentioned but misled whites who have made homes upon this tract; but be that as it may, the question of right should be settled at the earliest

possible moment, for the greater the delay the more difficult will be its adjustment.

All present assented to the agreement and signed the same.

One council was held at Grand Marais, with a part of the Grand Portage band, October 20. These Indians accompanied the Commission to Grand Portage, where councils were held October 23, 24, and 25. At these councils the Indians gave very marked attention, and at the last council expressed themselves as fully understanding and fully satisfied with the terms of the act, and signed the article of agreement with much cheerfulness and unanimity. These Indians complain that white fishermen spread so many large nets near their reservation that the Indians are unable to procure a supply of fish for food.

Bois Forte and Vermillion councils were held November 9, 10, 11, and 12.

At the first council the Indians seemed timid and distrustful. Indeed, the Vermillion Lake and Net Lake parties seemed to distrust each other, and declined to enter into the discussion of the subject presented to them. Subsequently better councils prevailed, and the Indians announced that they should hereafter act as a unit. From this time the discussion was entered into with freedom and cheerfulness, and finally resulted in their "touching the pen" with great solemnity and much formality.

These Indians have the best hunting grounds of any of the Chippewa bands; there being contiguous to them an immense tract of timber land over which

the white man seldom passes. They seem willing to learn to till the soil, but ask for better facilities. When asked how they cultivated their potatoes, these men of the North say they drove a stake into the ground and pried up the earth, and then made it fine with their hands. Much of the lands on the Lake Superior Reservations is unfit for cultivation. And it is believed that if representatives from these bands can visit White Earth, many of them will cheerfully remove there. The Bois Forte Indians complain that they have been despoiled of a large amount of timber cut from their reservation, which is run down Little Fork River to the British possessions. We promised to call the attention of the Department to this.

At Fond du Lac the first council was held November 18, and continued daily until and including November 21.

It will be seen by the proceedings that Nah-gah-nub, the head chief, did much of the talking. He is a very old man and not in his prime, physically or mentally, but is respected by all. Many of his band for want of work (the cutting of timber on this reservation having been suspended by order of the Department) are in great danger of suffering during this winter and coming spring. Heretofore, while permitted to cut timber, they were well to do and contented.

Like all of the Mississippi bands, they feel greatly grieved at the long continued withholding of the money due them from the Government. Our positive assertions that justice should speedily be done, not only in this respect, but in the matter of a palpable

error in the boundary lines of their reservation, induced them to listen attentively to the propositions submitted, and all touched the pen.

By the fourth article of treaty at La Pointe, September 30, 1854, it is stipulated that the Fond du Lac Reservation shall embrace the following boundaries:

"Beginning at an island in the St. Louis River, above Knife Portage, called by the Indians Paw-paw-sco-me-me-tig, running thence west to the boundary line heretofore described, thence north along said boundary line to the mouth of Savannah River, thence down the St. Louis River to the place of the beginning. And if said tract shall contain less than 100,000 acres, a strip of land shall be added on the south side thereof large enough to equal such deficiency."

Whoever was sent to make a survey of this reservation followed the last clause of the article, and by his survey limited the area to 92,346 acres, the north end of his survey line on the west not reaching within 12 miles of the mouth of the Savannah River, thus defrauding these Indians of over 100,000 acres, which lands were put into the market and long ago disposed of by the United States; and for over a quarter of a century this injustice has been permitted to exist, a festering and deep-seated cause of complaint against the Government. The Indians at the time of the making of the treaty had the boundary lines definitely fixed, by natural lines to them unmistakable. They knew no more about acres than they did of the mariner's compass.

We had no hesitation in promising that the Government would speedily remedy this grave error.

As the various bands decided to take their allotments on their respective reservations, and have constructively done so, we told them that the $90,000 to be advanced and already appropriated would be paid pro rata, as soon after the approval of these negotiations by the President as should be practicable, but not later than the coming spring. The amount will be so small to be paid to each individual that it is not probable that any will elect to receive anything but money. As they are in the most destitute condition, and as we gave them to understand that the money would be so paid, we trust neither the Indians nor the Commission will be disappointed in this.

The clause of the act of January 14, 1889, providing for the payment of the interest that may accrue on the permanent fund, was to us obscure inasmuch as it says "one-half of said interest shall be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use, and one-fourth of said interest shall during the same period and with the like exception be annually paid in cash in equal shares per capita to all other classes of said Indians," etc., and as we could neither explain this to the Indians or comprehend it so as to give it such an interpretation as would do equal justice we promised the cash payment should be made per capita in equal shares.

Wherever we went the Indians expressed a desire that the Government would set aside a sufficient quantity of land upon each reservation for Government buildings, such as may be necessary for phy-

sician, blacksmith, farmer, carpenters, and for missionaries, traders, etc. We hope this will be done, and that order, as to the location and the erection of all such buildings, will be enforced.

They also requested that upon each reservation a tract of pine land be reserved and held by the General Government, as might be necessary for their common use, and to be so held during the pleasure of the Secretary of the Interior. We earnestly commend this request.

They all earnestly plead for saw-mills, cattle, agricultural and mechanical implements, which they must have or they can make no substantial progress. They must be assisted in breaking and fencing land, building houses, and with provisions, until they can sustain themselves. They are no longer tribal Indians, but citizens at present helpless, and must be treated as such. The saw-mills are of the utmost importance, for at present nearly all live in single-room wigwams or huts, where privacy is unknown, without or within. To return young boys and girls to such abodes who have been educated in refined and chaste society at Government schools in the East will be destructive to their morals and a loss of the expense incurred.

Although the Indians have decided to take their allotments upon their reservations, it will not be well, in many cases, they should do so, and we believe that if rightly cared for, many can be induced in the near future to remove to White Earth. For this reason it may not be prudent to urge the making of in-

dividual allotments upon other than White Earth and Red Lake Reservations at present.

According to the established custom, none but chiefs and headmen speak in council, but at various places others conferred with us by day and by night, and many as individuals expressed a desire to remove to White Earth as soon as provisions can be made for their subsistence. Their removal should be encouraged, as it will be of the greatest benefit to the Indians and to the State. It is now impracticable to make allotments upon any save the White Earth Reservations, and will be until the others shall be surveyed. All but the White Earth and a part of the Red Lake Reservation are heavily timbered and unfit for cultivation without a heavy expenditure of money and labor, and at best cannot for many years be profitably farmed; and it is doubtful, now that the game has nearly all disappeared, if for several years they can raise enough for self-support.

As 10 acres of maple timber for sugar making is a large tract for one family, they requested that, to accommodate as many as possible, 10 acres only, by legal subdivisions, should be allowed each family now occupying the same. We promised to ask that this most sensible request be granted.

As the four townships of pine land ceded to the Government, of the White Earth Reservation, have been surveyed, and as the timber is liable to be stolen or burned, the Indians desire an early estimate and sale of the same.

On some of the reservations there are swamps of valuable cedar and tamarac which cannot be culti-

vated or sold for agricultural purposes, and the land is liable to be denuded of the timber by trespassers. The Indians request that such land be withheld from sale under the preëmption laws, and that the Secretary of the Interior be authorized to cause the same to be sold in such manner and upon such terms as to him shall seem best for their interest.

It is reported and believed that upon the Grand Portage, Bois Forte, and Vermillion Reservations there are valuable mines, and that if such are discovered after examination they shall be disposed of by the Secretary of the Interior so as to best subserve the interests of the Indians. This is in accordance with their request.

A further appropriation for surveys and examination of lands will be necessary. The pine ceded is estimated by various parties to reach in value from twenty-five to fifty millions of dollars. A small appropriation can be used for the purpose of defraying the expenses of Indians from a distance who may desire or can be persuaded to visit the White Earth Reservation with the expectation of removing thereto before allotments shall be taken or confirmed elsewhere.

Provision should be made for a mill, furnishing cattle, and farming implements, etc., to enable the Red Lake Indians to commence farming and building houses the coming spring.

The head chief of the Pillagers, Flatmouth, has for several years resided in Canada, his sister, Ruth Flatmouth, is in her brother's absence the acknowledged

Queen, or leader of the Pillagers; two other women of hereditary right acted as leaders of their respective bands, and at the request of the chiefs were permitted to sign the agreements.

In taking the census, which was a tedious work, we took unusual pains to see that all rightful persons were included, and in every case not only submitted it to the chiefs and leading persons of the tribe, but secured their presence and assistance. After having explained to them the importance of accuracy, they fully and earnestly gave their best efforts to insure its correctness.

United States Agent B. P. Schuler accompanied us to each and every band within his jurisdiction, and gave us most valuable official as well as personal assistance.

M. A. Leahy, United States agent at Ashland, joined the commission at the Fond du Lac Reservation and rendered us material aid.

Father Aloysius, O. S. B., was with us at Red Lake, White Earth, and Leech Lake, and at all times used his influence in the interest of our work.

In no instance did we encounter opposition from the traders or white men, husbands of Indian women; on the contrary, all readily gave such assistance as they could. We feel warranted in saying that there was not an Indian who was not fully informed of the purport of our mission, and that the assent of all would have been obtained had authority been given us to put in the way of adjustment unsettled claims.

In the expenditures incident to the long distance traveled, the length of time consumed, the number of

Indians we were compelled to subsist, and the large force we had to employ as messengers in taking the census and aiding in securing the signatures of such only as were authorized to sign the agreements, and making in duplicate said agreements, and in triplicate the census rolls, we have had constantly in view the injunction of "observing and practicing the utmost economy."

Among the Indians are many well-educated mixed bloods, who will be of great assistance in leading the unenlightened onward.

In Michigan, Wisconsin, and elsewhere we know there are persons of Chippewa blood that will claim, and no doubt many are entitled to, the benefits under the recent negotiations, who were, from their higher education and associations, forced to separate from their bands and seek a living and more congenial society elsewhere, who, now that they can hold lands in severalty and come under the protection of the law, will return to their old homes; for such consideration should be given hereafter. We think, however, that the safe rule to be observed will be to consult the chiefs and head men as to the justice of their claims.

To enable the Indians to commence their new life in such a way as will, without loss of time, encourage them to follow all industrial pursuits possible, it is evident a sum should be advanced by the Government sufficient to enable them, with their labor, to put as much land under cultivation and build as many homes as practicable. At each and every place, either in open council or in private consultation, they

were urgent in requesting such aids as are indispensable to white men. Especially, all not pagans expressed a decided preference for mission schools, deeming it essential that the morals of their children, as well as their education, should receive careful attention.

If this shall be done and the Indians are properly guided, the most happy results may be expected to follow.

Give the Indian justice, kind and patient treatment, and his confidence can be gained, and by a wise hand he can be started on the road to a useful life. He is naturally trustful, with strong attachments for those he believes to be his friends. To his enemies and to those he distrusts, a different nature will be unmistakably visible.

In carrying out this new departure, many details must be considered. Of the final result of this most beneficent measure, properly put into execution, there cannot be a doubt.

Respectfully,

HENRY M. RICE.
MARTIN MARTY.
JOSEPH B. WHITING.

Hon. T. J. Morgan,
Commissioner of Indian Affairs,
Interior Department, Washington, D. C.

Schedule showing the number of acres in the Chippewa reservations in the State of Minnesota.

Bois Fort	107,509
Deer Creek	23,040
Fond du Lac	92,346
Grand Portage	51,840
Leech Lake	94,440
Mille Lac	61,014
Red Lake and Pembina bands	3,200,000
Vermillion Lake	1,080
White Earth	796,672
Winnebagoshish, Cass Lake, and White Oak Point	329,000
Total	4,747,931

Name of Band.	Number in Each Band.				No. Assenting.
	Adult Males.	Adult Females.	Minors.	Total.	
Red Lake and Pembina Chippewas	386	422	578	1,386	324
Mississippi Chippewas	954	854	1,414	3,002	688
Pillager and Lake Winnebagoshish	600	649	959	2,208	466
Grand Portage Chippewas	73	85	136	294	72
Bois Forte Chippewas	228	224	291	743	211
Fond du Lac Chippewas	137	187	327	671	123
Total	2,178			8,304	1,884

A.

SIGNATURE ROLLS RED LAKE BANDS OF CHIPPEWA INDIANS, MINNESOTA.

"We, the undersigned, being male adult Indians over eighteen years of age, of the tribes or bands of Chippewa Indians occupying and belonging to the Red Lake Reservation, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding, the act of Congress, approved January 14, 1889, entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota' (Public No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and

each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following described boundaries, to wit:

Commencing at the point on Thief River where the same crosses the line between Marshall and Polk Counties, thence easterly to the most northwesterly point of the upper Red Lake, thence easterly along the northerly shore of said upper Red Lake to a point due north of a point 1 mile east from the easterly end of the lower Red Lake, thence due south to the last-named point, thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the lower Red Lake, thence south to a point from which a line extending west passes midway between what is called the "big marsh" and the sugar bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the Lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation as the same has heretofore existed, thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNally & Co., of Chicago, Ill. (but all water-ways within the reservation above described are to be free for commercial purposes to all citizens of the United States), for the purposes and upon the terms stated in said act, which said lands embraced within the foregoing boundaries have been reserved by the commissioners appointed under said act and as therein authorized for the purpose of making and filling the allotments therein provided for.

Witness our hands and seals hereto subscribed and affixed at the Old Red Lake Agency, on the Red Lake Reservation, in the State of Minnesota, this 8th day of July, 1889.

HENRY M. RICE [Seal],
JOSEPH B. WHITING [Seal],
Commission.

B. P. SHULER,
United States Indian Agent.

W. C. HUBBELL,
Secretary to Commission."

[Here follow Indian signatures.]

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians of the Red Lake Reservation whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission.
M. C. ENGLISH,
Interpreter.

JOHN ENGLISH.
H. H. BEAULIEU.
Red Lake Reservation, Minn., July 8, 1889.

We hereby certify that we were present and witnessed the signatures of the above named Indians to the foregoing instrument.

A. R. JOURDAN.
J. E. PERRAULT.

G. A. MORRISON.
ROBERT FAIRBANKS.
W. R. SPEARS.
Red Lake Reservation, Minn., July 8, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing, negotiated with the Red Lake bands of Chippewa Indians in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," wherein it is also provided "That all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

B.

SIGNATURE ROLLS PEMBINA BANDS OF CHIPPEWA INDIANS, WHITE EARTH RESERVATION, MINN.

We, the undersigned, being male adult Indians over eighteen years of age, of the Pembina tribe or band of Chippewa Indians, occupying and belonging to the White Earth Reservation, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota" (Public No. 13), which said act is embodied in the foregoing instrument, and, after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to all and so much of said Red Lake Reservation as is not embraced in the following described boundaries, to wit:

Commencing at the point on Thief River, where the same crosses the line between Marshall and Polk counties, thence easterly to the most northwesterly point of the Upper Red Lake, thence easterly along the northerly shore of said Upper Red Lake to a point due north of a point 1 mile east from the easterly end of the Lower Red Lake, thence due south to the last-named point, thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the Lower Red Lake, thence south to a point from which a line extending west passes midway between what is called the "Big Marsh" and the Sugar Bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth Road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the Lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the bound-

ary of Red Lake Reservation as the same has heretofore existed; thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNally & Co., of Chicago, Ill. (but all waterways within the reservation above described are to be free for commercial purposes to all citizens of the United States), for the purposes and upon the terms stated in said act, which said lands embraced within the foregoing boundaries have been reserved by the commissioners appointed under said act and as therein authorized for the purpose of making and filling the allotments therein provided for.

Witness our hands and seals hereto subscribed and affixed at the White Earth Reservation, in the State of Minnesota, this 29th day of July, 1889.

[Seal.] HENRY M. RICE,
[Seal.] JOSEPH B. WHITING,
Commissioners.

B. P. SHULER,
United States Indian Agent.
W. C. HUBBELL,
Secretary to Commission.

[Here follow Indian signatures.]

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians of the Pembina tribe or band of Chippewa Indians occupying the White Earth Reservation whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission,
WM. V. WARREN,
United States Interpreter,
Interpreters.

C. H. BEAULIEU, SR.
H. H. BEAULIEU.
J. E. PERRAULT.
White Earth Reservation, Minn., July 29, 1889.

We hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

JOSEPH HOLE IN THE DAY.
WM. F. CAMPBELL.
THEO. H. BEAULIEU.
White Earth Reservation, Minn., July 29, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing, negotiated with the Pembina tribe or band of Chippewa Indians occupying or belonging to the White Earth Reservation, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," wherein it is also provided "That all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

C.

SIGNATURE ROLLS MISSISSIPPI CHIPPEWA INDIANS, WHITE EARTH RESERVATION, MINN.

We, the undersigned, being male adult Indians over eighteen years of age of the tribes and bands of Chippewa Indians occupying and belonging to the White Earth Reservation, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress approved January 14, 1889, of which the following is a copy, to wit:

(PUBLIC No. 13.)

AN ACT for the relief and civilization of the Chippewa Indians in the State of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title

and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: *Provided further*, That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein, except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the In-

dian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

Sec. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States, and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians, on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes;" and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: *Provided*,

however, That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: *Provided further*, That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

Sec. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes, and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed "pine lands," the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall be filed with the Commisioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall

not be at a rate of less than three dollars per thousand feet, board measures of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole, then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event shall exceed the sum of six dollars per day for each person so employed, including all expenses.

All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed "agricultural lands."

Sec. 5. That after the survey, examination, and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, St. Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within

which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entirely. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon application at the local land office.

Sec. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days' notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: *Provided*, That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him in the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: *Provided*, That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, preëmption, or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: *Provided*, That any person who has not heretofore had the benefit of the homestead or preëmption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either

of said laws may make a second homestead entry under the provisions of this act.

Sec. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: *Provided*, That Congress may, in its discretion, from time to time during the said period of fifty years, appropriate for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual in-

terest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion af the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live-stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the said United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

Sec. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

Approved January 14, 1889.

And after such explanation and understanding have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to all and so much of said White Earth Reservation as is not embraced in the following described boundaries, to wit:

Townships 141 and 142, of range 37; townships 141, 142, 143, 144, 145 and 146, of range 38; townships 141, 142, 143, 144, 145, and 146, of range 39; townships 141, 142, 143, 144, 145, and 146, of range 40; townships 141, 142, 143, 144, 145, and 146, of range 41; and townships 141, 142, 143, 144, 145, and 146, of range 42, for the purposes and upon the terms stated in said act, which said lands, embraced within said boundaries,

have been reserved by the commissioners appointed under said act and as therein authorized, for the purpose of making and filling the allotments therein provided for; and we do also hereby grant, cede, and relinquish to the United States, for the purposes and upon the terms stated in said act, all our right, title, and interest in and to the lands reserved by us and described in the first article (ending with the words "to the place of beginning") of the treaty with the Chippewas of the Mississippi, proclaimed April 18, 1867 (16 Stat., p. 719), and also to the Executive addition thereto made and described in an executive order dated October 29, 1873; and we do also hereby cede and relinquish to the United States all our right, title, and interest in and to all and so much of the Red Lake Reservation as is not required and reserved under the provisions of said act, to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed, at White Earth Agency, in the State of Minnesota, this 29th day of July, 1889.

[Seal.] HENRY M. RICE,
[Seal.] JOSEPH B. WHITING,
Commissioners.
B. P. SHEELER,
United States Indian Agent.
W. C. HUBBELL,
Secretary to Commission.

[Here follow Indian signatures.]

WHITE EARTH CHIPPEWAS OF THE MISSISSIPPI.
GULL LAKE BAND.

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission,
WM. V. WARREN,
U. S. Interpreter,
Interpreters.

C. H. BEAULIEU, Sr.
H. H. BEAULIEU.
J. E. PERRAULT.
White Earth Agency, Minn., July 29, 1889.

We hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

JOSEPH HOLE IN THE DAY.
WM. F. CAMPBELL.
THEO. E. BEAULIEU.

White Earth Agency, Minn., July 29, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing negotiated with the tribes and bands of Chippewa Indians occupying and belonging to the White Earth Reservation, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," wherein it is also provided "That all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

D.

SIGNATURE ROLLS MISSISSIPPI CHIPPEWA INDIANS, WHITE OAK POINT BANDS, MINNESOTA.

We, the undersigned, being male adult Indians over eighteen years of age, of the White Oak Point Band of Chippewas of the Mississippi occupying and belonging to the reservation established by executive order, dated October 29, 1873, as an addition to the reservation provided for by the first article of the treaty with the Chippewas of the Mississippi, proclaimed April 18, 1867 (16 Stat., 719), do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding, the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota (Public No. 13), which said act is modified in the foregoing instrument, and after such explanation and understanding have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify

the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to all and so much of the White Earth Reservation as is not required and reserved under and in accordance with the provisions of said act, to make and fill the allotments in quantity and manner as therein provided for the purposes and upon the terms specified in said act; and we do also hereby grant, cede, and relinquish to the United States for the purposes and upon the terms stated in said act, all our right, title, and interest in and to the lands reserved by us and described in the first article (ending with the words "to the place of beginning") of the treaty with the Chippewas of the Mississippi, proclaimed April 18, 1867 (16 Stat., p. 719), and also to the aforesaid executive addition thereto, made and described in an executive order dated October 19, 1873, and we also hereby cede and relinquish to the United States all our right, title, and interest in and to all and so much of the Red Lake Reservation as is not required and reserved under and in accordance with the provisions of said act, to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed at White Oak Point, in the State of Minnesota, this 6th day of September, 1889.

[Seal.] HENRY M. RICE.
[Seal.] JOSEPH B. WHITING,
Commissioners.

[Here follow Indian signatures.]

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission.
C. H. BEAULIEU,
Interpreter.

HENRY MARTIN.
WILLIAM BOUYA.
White Oak Point, Minn., September 6, 1889.

We hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

B. P. SHULER,
United States Indian Agent.
W. C. HUBBELL,
Secretary to Commission.

H. H. BEAULIEU.
G. A. MORRISON.
THEO. H. BEAULIEU.
White Oak Point, September 6, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing, negotiated with the White Oak Point band of Chippewa Indians, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota," wherein it is also provided, "That all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

E.

SIGNATURE ROLLS MISSISSIPPI CHIPPEWA INDIANS, MILLE LAC BANDS.

We, the undersigned, being male adult Indians over eighteen years of age of the Mille Lac band of Chippewas of the Mississippi, occupying and belonging to the Mille Lac Reservation under and by virtue of a clause in the twelfth article of the treaty of May 7, 1864 (13 Stat., p. 693), do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota" (Public No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey

to the United States all our right, title, and interest in and to all and so much of the White Earth Reservation as is not required and reserved under and in accordance with the provisions of said act to make and fill the allotments in quantity and manner as therein provided for the purposes and upon the terms stated in said act; and we do also hereby grant, cede, and relinquish to the United States for the purposes and upon the terms stated in said act, all our right, title, and interest in and to the lands reserved by us and described in the first article (ending with the words "to the place of beginning") of the treaty with the Chippewas of the Mississippi, proclaimed April 18, 1867 (16 Stat., p. 719), and also to the aforesaid executive addition thereto made and described in an executive order dated October 19, 1873; and we do also hereby cede and relinquish to the United States all our right, title, and interest in and to all and so much of the Red Lake Reservation as is not required and reserved under and in accordance with the provisions of said act, to make and fill the allotments to the Red Lake Indians, in quantity and manner as therein provided; and we do also hereby forever relinquish to the United States the right of occupancy on the Mille Lac Reservation, reserved to us by the twelfth article of the treaty of May 7, 1864 (13 Stat., p. 693).

Witness our hands and seals hereto subscribed and affixed at Mille Lac, in the State of Minnesota, this 5th day of October, 1889.

[Seal.] HENRY M. RICE,
JOSEPH R. WHITING,
Commissioners.

[Here follow Indian signatures.]

WHITE EARTH CHIPPEWAS OF THE MISSISSIPPI.
GULL LAKE BAND.

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission.

E. H. BEAULIEU,
ALLEN R. JOURDAN,
Interpreters.

Mille Lac, Minn., October 5, 1889.

We hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

B. P. SHULER,
United States Indian Agent.
W. C. HUBBELL,
Secretary to Commission.

H. H. BEAULIEU.
G. A. MORRISON.
THEO. H. BEAULIEU.
Mille Lac, October 5, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing negotiated with the Mille Lac band of Chippewa Indians, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota," wherein it is also provided "That all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

F.-H.

SIGNATURE ROLLS—PILLAGER BANDS OF CHIPPEWA INDIANS—LEECH LAKE, CASS LAKE AND WINIBIGOSHISH RESERVATIONS, MINN.

We, the undersigned, being male adult Indians over eighteen years of age of the Pillager and Lake Winibigoshish bands of Chippewa Indians, residing upon the Leech Lake, Lake Winibigoshish, and Cass Lake Reservations, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding, the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota" (Public

No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof, and do hereby grant, cede, and relinquish and convey to the United States, for the purposes and upon the terms stated in said act, all our right, title, and interest in and to the lands reserved and set apart for the Pillager and Lake Winibigoshish bands by the treaty of February 22, 1855 (10 Stat., p. 1165), and particularly described in an Executive order dated November 4, 1873, as follows, to wit: "Beginning at the mouth of Little Boy River; thence up said river through the first lake to the southern extremity of the second lake on said river; thence in a direct line to the most southern point of Leech Lake, and thence through said lake so as to include all the islands therein, to the place of beginning," and also to the two other separate tracts reserved and set apart for the said Pillager and Lake Winibigoshish bands by the second article of said treaty, and as therein described, and also to the Executive addition thereto made and described in an Executive order dated May 26, 1874; and we do also hereby cede and relinquish to the United States all our right, title, and interest in and to so much of the Red Lake Reservation as is not required and reserved under the provisions of said act, to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed at the Leech Lake Agency, in Minnesota, this 21st day of August, 1889.

[Seal.] HENRY M. RICE,
[Seal.] MARTIN MARTY,
[Seal.] JOSEPH B. WHITING,
Commissioners.

[Here follow Indian signatures.]

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians of the Leech Lake, Cass Lake, and Lake Winnibigoshish reservations, whose names are subscribed and affixed

thereto, and that we were present and witnessed the signature of each.

P. H. BEAULIEU,
Interpreter to the Commission.
HENRY MARTIN,
United States Interpreter.

H. H. BEAULIEU.
THEO. H. BEAULIEU.
WILLIAM BONGA.
Leech Lake, August 21, 1889.

We hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

B. P. SHULER,
United States Indian Agent.
W. C. HUBBELL,
Secretary to the Commission.
ALOYSIUS HERMANUTZ, O. S. B., Missionary.
G. A. MORISON.
Leech Lake, August 21, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing negotiated with the Pillager and Lake Winnibigoshish bands of Chippewa Indians, residing upon the Leech Lake, Lake Winnibigoshish, and Cass Lake reservations, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota," wherein it is also provided "that all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

G.

SIGNATURE ROLLS PILLAGER BANDS OF CHIPPEWA INDIANS, OTTER TAIL BANDS, WHITE EARTH RESERVATION, MINNESOTA.

We, the undersigned, being male adult Indians over eighteen years of age of the tribe or band of Otter

Tail Chippewa Indians, occupying and belonging to the White Earth Reservation, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota" (Public No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to all and so much of said White Earth Reservation as is not embraced in the following described boundaries, to wit:

Townships 141 and 142 of range 37; townships 141, 142, 143, 144, 145, and 146 of range 38; townships 141, 142, 143, 144, 145, and 146 of range 39; townships 141, 142, 143, 144, 145, and 146 of range 40; townships 141, 142, 143, 144, 145, and 146 of range 41; and townships 141, 142, 143, 144, 145, and 146 of range 42, for the purposes and upon the terms stated in said act, which said lands embraced within said boundaries have been reserved by the commissioners appointed under said act and as therein authorized for the purpose of making and filling the allotments therein provided for, and we do also hereby grant, cede, and relinquish to the United States for the purposes and upon the terms stated in said act, all our right, title, and interest in and to the lands reserved by us and described in the first article (ending with the words, "to the place of beginning") of the treaty with the Chippewas of the Mississippi, proclaimed April 18, 1867 (16 Stat., p. 719), and also to the Executive addition thereto made and described in an Executive order dated October 29, 1873; and we do also hereby cede and relinquish to the United States all our right, title, and interest in and to all and so much of the Red Lake Reservation as is not required and reserved under the provisions of said act to make and fill allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed at White Earth Agency, in the State of Minnesota, this 29th day of July, 1889.

B. P. SHULER.
United States Indian Agent.
W. C. HUBBELL,
Secretary to Commission.
HENRY M. RICE, [Seal.]
JOSEPH B. WHITING, [Seal.]
Commissioners.

[Here follow Indian signatures.]

WHITE EARTH OTTER TAIL PILLAGER CHIPPEWAS.
OTTER TAIL SIGNATURES.

We hereby certify that the foregoing instrument was fully interpreted and explained to the Otter Tail Chippewa Indians occupying the White Earth Reservation, whose names are subscribed and affixed thereto, and that we were present and witnessed the signature of each.

C. H. BEAULIEU,
Interpreter to the Commission,
WM. V. WARREN,
United States Interpreter,
Interpreters.

C. H. BEAULIEU, Sr.,
H. H. BEAULIEU,
J. E. PERRAULT,
White Earth Agency, Minn., July 29, 1889.

We hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

JOSEPH HOLE-IN-THE-DAY,
WM. F. CAMPBELL,
THEO. H. BEAULIEU,
G. A. MORRISON.
White Earth Agency, Minn., July 29, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing negotiated with the Otter Tail band of Indians, occupying and belonging to the White Earth Reservation, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota," wherein it is also provided "that all

agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

I.

AGREEMENT WITH CHIPPEWA INDIANS OF GRAND PORTAGE RESERVATION, WITH SIGNATURES.

We, the undersigned, being male adult Indians over eighteen years of age of the tribes or bands of Chippewa Indians occupying and belonging to Grand Portage Reservation, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota" (Public No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to the said Grand Portage Reservation, in the State of Minnesota; and we do also hereby cede and relinquish to the United States all title and interest that we may have in and to all and so much of the Red Lake Reservation as is not required and reserved under and in accordance with the provisions of said act, to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed at Grand Portage, on the Grand Portage Reservation, in the State of Minnesota, this 24th day of October, 1889.

MARTIN MARTY, [Seal.]
JOSEPH B. WHITING, [Seal.]
Commissioners.

[Here follow Indian signatures.]

We do hereby certify that the foregoing instrument was fully interpreted and explained to the Indians of the Grand Portage Reservation, whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission.
JOHN MORRISON,
Interpreter.

Grand Portage Reservation, Minn., October 24, 1889.

We do hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

G. A. MORRISON.
PETER DUFAULD.

W. C. HUBBELL,
Secretary to the Commission.

Grand Portage Reservation, Minn., October 24, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing negotiated with the Grand Portage bands of Chippewa Indians, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota," wherein it is also provided "that all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

K.

AGREEMENT WITH CHIPPEWA INDIANS OF FOND DU LAC RESERVATION, WITH SIGNATURES.

We, the undersigned, being male adult Indians over eighteen years of age, of the tribes or bands of Chippewa Indians occupying and belonging to Fond du Lac Reservation, in the State of Minnesota, do here-

by certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota" (Public No. 13), which said act is embodied in the foregoing instrument, and, after such explanation and understanding, have consented and agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act and each and all of the provisions thereof, and do hereby grant, cede, and relinquish, and convey to the United States all right, title, and interest in and to the said Fond du Lac Reservation, in the State of Minnesota; and we do also hereby cede and relinquish to the United States all right, title, and interest that we may have in and to all and so much of the Red Lake Reservation as is not required and reserved under and in accordance with the provisions of said act to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed, at the school house on the Fond du Lac Reservation, in the State of Minnesota, this 21st day of November, 1889.

HENRY M. RICE, [Seal.]
MARTIN MARTY, [Seal.]
JOSEPH B. WHITING, [Seal.]
Commissioners.

[Here follow Indian signatures.]

FOND DU LAC SIGNATURES.

We do hereby certify that the foregoing instrument was fully interpreted and explained to the Indians of the Fond du Lac Reservation, whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission.
JOHN MORRISON, Interpreters.
FRANK BLATCHFORD,
United States Interpreter.
JAS. I. COFFEY.
Fond du Lac Reservation, Minn., November 21, 1889.

We do hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

R. G. RODMAN, Jr.,
Chief Clerk La Pointe Agency.
G. A. MORRISON.

M. A. LEEHY,
United States Indian Agent.
W. C. HUBBELL,
Secretary to Commission.
PETER DUFAULD.

Fond du Lac Reservation, Minn., November 21, 1889.

Executive Mansion, March 4, 1890.

This instrument in writing negotiated with the band of Chippewa Indians occupying and belonging to the Fond du Lac Reservation, in the State of Minnesota, under and in pursuance of the act of Congress of January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota," wherein it is also provided "that all agreements therefor shall be approved by the President of the United States before taking effect," is hereby approved.

BENJ. HARRISON.

L.

AGREEMENT WITH BOISE FORT AND DEER CREEK CHIPPEWA INDIANS, WITH SIGNATURES.

We, the undersigned, being male adult Indians, over eighteen years of age, of the tribes or bands of Chippewa Indians occupying and belonging to Boise Fort and Deer Creek Reservations, in the State of Minnesota, do hereby certify and declare that we have heard read, interpreted, and thoroughly explained to our understanding the act of Congress, approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians, in the State of Minnesota" (Public No. 13), which said act is embodied in the foregoing instrument, and after such explanation and understanding, have consented and

agreed to said act, and have accepted and ratified the same, and do hereby accept and consent to and ratify the said act, and each and all of the provisions thereof, and do hereby grant, cede, relinquish, and convey to the United States all our right, title, and interest in and to the said Boise Fort and Deer Creek Reservations, in the State of Minnesota; and we do hereby cede and relinquish to the United States all right, title, and interest that we may have in and to all and so much of the Red Lake Reservation as is not required and reserved under and in accordance with the provisions of said act to make and fill the allotments to the Red Lake Indians in quantity and manner as therein provided.

Witness our hands and seals hereto subscribed and affixed at the school house on the Vermillion Reservation, in the State of Minnesota, this 12th day of November, 1889.

MARTIN MARTY, [Seal.]
JOSEPH B. WHITING, [Seal.]
Commissioners.

[Here follow Indian signatures.]

SIGNATURES OF BOISE FORT BANDS.

We hereby certify that the foregoing instrument was fully interpreted and explained to the Indians of the Boise Fort and Deer Creek Reservations whose names are subscribed and affixed thereto, and that we were present and witnessed the signatures of each.

P. H. BEAULIEU,
Interpreter to the Commission.
JOHN MORRISON,
Interpreter.

Vermillion Reservation, Minn., November 12, 1889.

We do hereby certify that we were present and witnessed the signatures of the above-named Indians to the foregoing instrument.

G. A. MORRISON.
PETER DUFAULD.

W. C. HUBBELL,
Secretary to Commission.

Vermillion Reservation, Minn., November 12, 1889.

Supreme Court of the United States.

Filed Oct. 30, 1901.

OCTOBER TERM, 1901.

No. 4, Original.

STATE OF MINNESOTA

vs.

ETHAN ALLEN HITCHCOCK, SECRETARY OF THE INTERIOR, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE.

REPLY BRIEF.

FRANK B. KELLOGG,
C. A. SEVERANCE,
ROBERT E. OLDS,
H. W. CHILDS,
W. B. DOUGLAS,
Counsel for Complainant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1901.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 4, Original.

STATE OF MINNESOTA

vs.

ETHAN ALLEN HITCHCOCK, SECRETARY OF THE INTERIOR, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE.

REPLY BRIEF.

I.

While not deeming it material to this case that the land in question had or had not been erected into an Indian reservation, we desire to make the following suggestions in reference to the proposition discussed under the first point of defendants' brief:

It will be noted that it is claimed that the country in question is an Indian reservation, to which the Indians have in some manner obtained greater rights than those which are incidental to their primary right of occupancy of unceded territory.

Referring to the treaty of 1863, cited by counsel on page

21 of his brief (13 St., 667), it will be noted that article 6 does not specifically refer to the Red Lake Indian reservation or to any particular reservation. It does provide that the President shall appoint a board of visitors, and makes provision for compensation for their services, and requires them "to report the qualifications and moral deportment of all persons residing upon the reservation under the authority of law."

We did not claim in our main brief that this provision of article 6 had reference to the reservation of 640 acres to each of the chiefs, "Moose Dung" and "Red Bear," under article 9. But what we do claim is that article 9 provides for the only reservation in this treaty. There is nothing to indicate that article 6 refers to this unceded country, and even if it does, it does not create a reservation, or grant to the Indians any rights beyond what they already had. It designates no boundaries, it fixes no limits, and makes no conditions as to occupancy. All of the Indians in northern Minnesota were at all the times above referred to and are now Chippewa Indians. They consisted of various bands occupying an extensive territory in northern Minnesota, which embraced the tract of country now in question.

Previous to 1863 there had been several Indian reservations set aside pursuant to treaties with the Indians and various acts of Congress, and especially pursuant to the treaty of February 22, 1855 (10 St., 1165), in which the Indians ceded the country east and south of the land in question.

By reference to this statute it will be seen that the President was required to cause several reservations to be set aside for different bands of Chippewa Indians, to wit, the Mississippi bands of Chippewa Indians, the Pillager and Lake Winnibigoshish bands, and others. These reservations, as they existed in 1889, are shown on the map, which we shall produce to the court. They were all in existence when the treaty of 1863 was made. The various appropria-

tion bills referred to by counsel on page 20 of his brief will be found simply to appropriate money to pay the *per diem* and mileage of the commissioners to be appointed to visit the missions, and have no reference whatever to any particular Indian reservation.

We have sufficiently mentioned the order of the President of March 18, 1879, enlarging the White Earth reservation, but we take this occasion to correct an error appearing in our main brief. We there stated that said order is attached to our own brief as Appendix B. This was an error. It was not so attached, but does appear in the brief of the defendants.

The only other matter under this head that we desire to refer to is the case of Spaulding *vs.* Chandler, 163 U. S., 394; and of that case it is sufficient to say that under the treaty of 1820 the United States agreed to secure to the Indians a perpetual right of fishing at the falls of St. Mary, and also a place of encampment upon the tract ceded by that treaty, convenient to the fishing grounds. By another treaty of 1836 it was provided that the reservation for the place of fishing and encampment made under the treaty of 1820 should remain unaffected. Furthermore, it was provided by act of Congress that the Secretary of War should cause to be designated upon a map the position and extent of the Indian reserve, and this was done. The Indians were thereby guaranteed the perpetual right of occupancy and fishing. This was a greater right than they had as original occupiers of the soil of that country. This is evidenced by the fact that in 1855, when they gave up this right of fishery, it was done by a treaty specifically ceding their rights to the Government.

The court, speaking by Mr. Justice White, there say:

"The clear duty rested upon the Government to see that a tract was reserved for the purposes designated in the treaty (United States *vs.* Carpenter, 111 U. S., 347–'9). If a survey was necessary for that purpose, it was the duty of

the Government to cause such survey to be made, and it appears from the evidence that in 1845, in a survey made by the authority of the Government the exterior boundaries of the Indian reservation were delineated upon the map of the surveys then made, and such boundaries were subsequently adopted in the survey under the act of 1850."

We close this branch of the brief by saying that Congress never granted to the Indians in the Red Lake country any greater rights than they originally had as primary occupiers of the soil. It is idle to say that from long occupancy an Indian reservation will be presumed. We think it will rather be presumed that the original state of the Indians as occupiers of the soil continued. This was so held by Judge McCreary in the case we cited in the original brief.

II.

We now desire to particularly call the court's attention to the defendants' second point, because it is vital to this case. Counsel lays great stress upon the fact that the lands in controversy never became public lands, and so never became subject to the State school land grant. He bases this claim upon the construction which this court has placed upon grants to railroads, wherein it has been held that such grants attach only to so much of the public domain as was at the time when the grants were made subject to sale or other disposition by the Government, and not encumbered by any claim.

As to railroad and similar private grants, it is held that if, at the time when the grant is made, and, in some cases, when the railroad is definitely located, any part of the land is encumbered by a settlement under the homestead or preemption laws, or reserved for any public use, the grant does not attach to such lands, even though the right of the homestead settler, or other claimant, is thereafter forfeited or abandoned and the public use discontinued.

It is with reference to these particular grants and this condition of circumstances that the terms "public lands" and "public domain" are employed by the court in the cases cited by counsel.

Such grants are strictly construed against the grantee. They are construed to be grants *in præsenti*, only to attach to such public lands as are absolutely free from claim, and the title, right to possession, and disposition may pass at once to the railroad company. Directly to the contrary is the rule as to school land grants. As to them the rule is well settled in this court that the title passes to the State subject to any prior right of occupancy by the Indians, or others, which the Government had stipulated to recognize. In other words, if at the time of the survey the land is upon an Indian reservation or unceded country, the State takes the fee subject to this encumbrance, and may await the extinguishment of the Indians' title or right; or, if any part of the land is covered by a pre-emption or homestead claim, it is not thereby excepted from the school land grant, but the State may await the extinguishment or abandonment of the encumbrance, and as to a settler, unless he completes and perfects his title, the State's right will attach. In other words, as to all such adverse claimants they do not create exceptions from the grant, but are encumbrances upon it, and are therefore diametrically opposed to the rules which obtain in railroad grants and other private grants. This doctrine rests upon several considerations: (*a*) Such grants are liberally construed in favor of the State, and (*b*) it is known when such grants are made that much of the territory is encumbered either by Indian reservations or Indian right of occupancy.

This rule is so well established that it is scarcely necessary to cite cases in support of it. Following a long line of judicial and departmental decisions upon the subject, this court has, in the recent case of the *United States vs. Thomas*,

151 U. S., 577, clearly enunciated what must now be deemed the well-settled doctrine of this court.

See also the authorities cited on this proposition on pages 24 *et seq.* of the original brief.

III.

For the purpose of this discussion we here group together the remaining points of counsel's brief.

Counsel calls attention in the beginning of his brief, and under this head, to the fact that the quantity of school lands which the State shall receive is not involved in this discussion; that the State is entitled to select lands in lieu of those within the unceded Indian country, and that the grant to the State can be accomplished through the application of other lands of equivalent area where the specific sections are not available.

It is a matter of common knowledge that the public lands of Minnesota available for selection by the State in view of losses are entirely inadequate. There are undoubtedly public lands in Minnesota, but they are of little value, are widely scattered, and are in no way an adequate compensation for the loss of 197,000 acres in the territory in question. The expense necessarily incident to examination and selection of indemnity lands would make the grant of little value to the State. It should not be overlooked that valuable public lands in that State have rapidly disappeared in recent years.

It clearly was never the intention of Congress to place no stress upon the numerical designation of school sections, or to intend that the grant could always be satisfied by equivalent selections. Such a doctrine is wholly at variance with that announced in Cooper *vs.* Roberts, 18 How., 178, cited at page 21 of plaintiff's main brief. It is there stated that "this is a definite purpose declared to consecrate the same central section of every township of every State which might be

added to the Federal system." With equal force has that policy been expressed with respect to the additional section 36. Congress has nowhere departed from that policy in subsequent legislation. Whenever it has spoken at all upon the subject, it has been merely to make provision for original sections lost to the State by any of the causes recognized in the various acts of Congress.

It is not to be overlooked that the preservation of extensive territory in a state of wilderness for Indian occupancy, whether as erected into a reservation or otherwise, was never intended to be a fixed or permanent policy of Government in dealing with the Indians. The reservation was at best but a temporary expedient, a police regulation, destined to be supplanted by wiser measures. This fact was in the minds of the parties to the compact in 1857. The State had the privilege to await the passing of the reservation and the extinguishment of the Indian right of occupancy and then take the specific sections. She has exercised that right and now asks the fulfillment by Congress of its part of the agreement.

The case of Haydenfeldt *vs.* Daney Gold and Silver Mining Co., 93 U. S., 634, does not in the least militate against this doctrine. No question was then presented or considered affecting an Indian reservation. The facts in that case come squarely within the purview of the joint resolution of 1857.

Counsel has quite mistaken the contention of the State as to the doctrine advanced in *Beecher vs. Wetherby*, 95 U. S., 517. We claim little, if anything, in common between the *Haydenfeldt* and the *Beecher* cases. We know of no reason why the former should be referred to in the decision of the latter. In the earlier of these cases it was held that the State did not acquire the section in question because the same had been disposed of before survey, while in the latter it was held that by virtue of the terms of the grant to the State a section lying *within an Indian reservation* came within its

terms and passed to the State with the extinguishment of the Indian title.

Nor does State of Colorado (6 L. D., 412), cited in defendants' brief, advance any view at variance with what is now contended for by the State. Secretary Lamar there expressly states the rule which was subsequently quoted and adopted by this court in United States *vs.* Thomas, 151 U. S., at page 583. The case is cited at pages 24, 36, and 37 of plaintiff's main brief.

We have already discussed the meaning and scope of the joint resolution of 1857 in the main brief of the plaintiff; but in view of the importance of the question and the views advanced in defendants' brief, we feel at liberty to here renew and enlarge upon that discussion.

The memorial of the legislature of the Territory of Minnesota in relation to the school sections and the resolution of Congress of March 3, 1857, could not possibly have applied to unceded Indian country. We have sufficiently argued in our main brief that the joint resolution of Congress was not intended to be wider in its scope than the memorial on which it was based and which called forth the resolution.

The memorial asked Congress to pass a law authorizing the State to select lieu lands in place of lands taken by actual settlers under the pre-emption laws of 1841, or lands taken for town-site purposes under the act of Congress of 1844. As neither of these could be taken in an Indian reservation or unceded Indian country, therefore this memorial could not possibly have applied to lands within the unceded Indian country. Congress did not allow settlers in the Indian country. Pre-emption laws did not apply to it. The town-site law did not apply to it. The rights of third parties could not possibly have intervened in any way in any lands within the unceded Indian country; but as only a part of the State was at that time unceded Indian country, the entire southern part of the State was open to settlement, and

it was this settlement under the pre-emption laws or town-site laws that the memorial had reference to and that Congress had in mind when it passed the resolution of March 3, 1857.

A glance at the joint resolution will also show that Congress only had in mind the actual settler under the pre-emption laws of 1841 and under the town-site act of 1844, because the latter part of the act provides:

"And if *such settler* can bring himself or herself within the provisions of the act of Sept. 4, 1841, *or the occupants* of the town site be enabled to show a compliance with the provisions of the law of the 23rd of May, 1844, then the right of preference granted by the said acts, in the purchase of *such portion* of the 16th and 36th sections so settled and occupied shall be in them respectively as if such sections had not been previously reserved for public purposes."

The whole tenor of the resolution has reference to actual settlers or persons occupying under the town-site act, and only incidentally refers to other disposition in the language "or reserved for public uses," undoubtedly contemplating the provision of the act of Congress authorizing the formation of a State government, in which it was provided that "where either of said sections or any part thereof has been sold or otherwise been disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to said State for the use of the schools."

We think we have shown in our main brief that Congress had no intention to enlarge the scope of this pledge to the State or in the resolution to go beyond what was asked by the State in its memorial to Congress.

This construction harmonizes the reservation of the school sections in the organic act of Minnesota of March 3, 1849; the memorial of the territorial legislature of the 26th of February, 1856; the pledge contained in the act authorizing the formation of a State government of February 26th, 1857, and the resolution of Congress of March 3, 1857, passed five days later.

The memorial, as we have seen, was undoubtedly called out by the fact that in the organic act of Minnesota sections 16 and 36 in each township were absolutely reserved for the purpose of being applied to schools in the Territory and the future State. The act of Congress authorizing the formation of a State government, containing the language "that where either of said sections or any part thereof has been sold or otherwise been disposed of other lands equivalent thereto," etc., "shall be granted to said State," was passed, of course, a year after the memorial of the territorial legislature and five days before the resolution of Congress. It may well be that Congress was in doubt as to whether, in order to be excepted from the provisions of its proposition which was to be submitted to the State for acceptance, lands must be disposed of prior to the date of the acceptance of the proposition or prior to their survey; and, as it was in the interest of the public that the lands should be settled as rapidly as possible, it was deemed wise for Congress to specifically provide that actual settlers, under the pre-emption law and under the town-site law *made before the survey*, should have a prior right to the particular lands thus settled upon, and the State should select lieu lands in place thereof. With the exception of the disposition of small portions of the public domain for Government works, such as forts, arsenals, and military reservations, the pre-emption laws and the town-site act formed the only means of the disposition of the public domain at that time; so that this memorial covered the cases in which the public had the most interest, to wit, actual settlers upon the public domain, and the language in the joint resolution, "reserved for public uses before the survey," was probably intended, as we have seen, as an interpretation of the proposition to the State of Minnesota that lands "sold or otherwise disposed of" should mean sold or disposed of before the survey, instead of before the proposition made by Congress was accepted by the State.

This is not inconsistent with the holding in the case of

State of Minnesota *vs.* Bachelder, 1 Wallace, p. 109. To be sure, in that case the attorney general of the State and the attorneys for the defendant assumed that the joint resolution modified the original proposition, and Mr. Justice Nelson held that to the extent that the joint resolution of Congress was responsive to the application of the territorial legislature it was a valid exercise of the congressional power, but did not pass upon the question of whether Congress had power or intended to go beyond the application made by the State. Since the decision in the 1st Wallace the Supreme Court of the United States, in Haydenfeldt *vs.* Daney Gold and Silver Mining Co., 93 U. S., 634, has held that language substantially the same as the language in the enabling act of Minnesota should be construed to exempt lands settled upon prior to the survey; so that the decision in the Bachelder case as to this joint resolution was really unnecessary; but at that time, while it had been the policy of Congress and of the people of the United States to dedicate sections 16 and 36 for the public schools, the law on this subject was in its formative period, and undoubtedly the Congress acted upon the assumption that the proposition to the State contained in the enabling act would render void any settlement under the homestead laws made after said proposition was accepted by the people of Minnesota. But we venture to state that no one at that time had the remotest idea that this proposition to the State, the memorial of the territorial legislature, or the joint resolution of Congress had any reference to the disposition of an entire unceded Indian country for the benefit of those Indians after their right of occupancy had been extinguished. We do not think Congress intended to do this in the act of 1889, and we deny the power of Congress, if such was its intention.

These various acts should be read and considered together and in the light of the policy of Congress to promote the establishment of public schools.

In interpreting a statute or a constitutional provision, resort may properly be had to the history of the times, to the conditions of the country as they existed at the date of the enactment to the previous condition of the law and the object to be accomplished by the legislative body.

Holy Trinity Church *vs.* United States, 143 U. S., 459.

United States *vs.* Union Pacific R. R. Co., 91 U. S., 79.

Croomes *vs.* State, 51 S. W., 927.

Collins *vs.* New Hampshire, 171 U. S., 34.

United States *vs.* Wong Kin Ark, 169 U. S., 653.

In the case of Holy Trinity Church *vs.* United States, 143 U. S., 459, the court says:

"It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within its spirit nor within the intention of its makers. This has been often asserted and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words makes it unreasonable to believe that the legislator intended to include the particular act. As said in Plowden, 205: 'From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances.'"

In the case of the United States *vs.* Union Pacific Railroad, 91 U. S., the court says:

"In construing an act of Congress we are not at liberty to recur to the views of individual members in debate nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used. But courts, in construing a statute may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it. (Aldridge *vs.* Williams, 3 Howard, 24; Preston *vs.* Browder, 1 Wheaton, 120.")

"Many of the provisions of the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it was passed."

A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the maker.

In the case of Croomes *vs.* State, 51 S. W., page 927, the court says:

"When it is plainly perceivable that a particular intention, though not precisely expressed, must have been in the mind of the legislator, that intention will be enforced and carried out and made to control the strict letter," citing Black's Interpretation of Laws, page 73.

In the case of Collins *vs.* New Hampshire, 171 U. S., page 34, the court says:

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

In the case of United States *vs.* Wong Kin Ark, 169 U. S., page 653, the court says:

"In construing any act of legislation, whether a statute enacted by the legislature or a constitution established by the people as the supreme law of the land, regard is to be had not only to all parts of the act itself, and of any former act of the same law-making power, of which the act in question is an amendment, but also to the condition and to the history of the law as previously existing, and in the light of which the new act must be read and interpreted."

If our interpretation of the resolution of Congress and of the other acts is correct, then the solution of this case is very simple. The reservations which Congress had in mind for public uses would be reservations for incidental and governmental purposes, in which the land would be dedicated to some public use—such uses as were well known to Congress at that time and ever since. To contend that Congress intended more than this would be to claim the power in Congress to absolutely nullify its grant to the State. If Congress could sell the lands to private parties or provide for a sale of land to private parties in the future and dedicate the proceeds to any public purpose it saw fit, its promise to the State which it declared in its proposition, when accepted by the State should be obligatory upon the United States and upon the State of Minnesota, would be a rope of sand. Suppose Congress had provided in 1889 that all of the remaining lands in Minnesota, including the unceded Indian country and outside of this country, should be sold at public auction or private sale and the proceeds used to build a new executive mansion in Washington. The money would undoubtedly be appropriated to a public use, but would it be *such a public use as Congress had in mind* when it entered into its solemn agreement with the State of Minnesota? We say, first, that Congress had no such power; and, second, if we concede the power, that the act of 1889 was not intended to appropriate

that which had already been dedicated to the State, under well-known rules of construction which we have cited.

Why should there be any reservation of sections 16 and 36 in the act of 1889? They had already been reserved. They had already been declared to belong to the State. Congress had already adopted all the provisions necessary to carry out that intent. No patent, no selection, no certification by the Department, no act whatever was required to vest the title of these lands in the State, except identification by survey. Even in the selection of lieu lands it has been held that no patent was necessary; that the bare selection by the State vested the title.

Hedrick *vs.* Hughes, 15 Wallace, 123.
See also authorities in our main brief.

But even if we were to concede, for the purposes of argument, that Congress had the power to thus nullify its grant to the State, is it to be presumed that Congress ever intended to do so? We are seeking the intention expressed by Congress in the act of January 14, 1889, and it can never be presumed that Congress by that act contemplated the complete destruction of the grant it had made to the State as evidenced by the acts of 1849 and 1857.

THE ACT OF FEBRUARY 28, 1891 (26 STATS., 796), GRANTING THE OPTION TO THE STATE TO SELECT LANDS IN LIEU OF THOSE CONTAINED IN INDIAN RESERVATIONS, OR TO AWAIT THE EXTINGUISHMENT OF THE INDIAN TITLE AND TAKE THE SPECIFIC SECTIONS, IS A CLEAR CONCESSION OF THE STATE'S RIGHT, AND WHOLLY INCONSISTENT WITH THE CONTENTION URGED BY THE DEFENDANTS.

This is the first act of Congress specifically granting to the States and Territories the right to waive their claim to sections 16 and 36 in any Indian country or Indian reservation and to select lands in lieu thereof, and was evi-

dently adopted to give the State the option to procure its quota of lands without awaiting the extinguishment of the Indian title, which might in some instances be many years. No previous act of Congress has granted this right. It is perfectly evident that Congress did not understand that the States and Territories previously had this right. In all grants to the States with which we are familiar there is the usual clause contained in the grant to Minnesota, in substance, that if sections 16 and 36 have been sold or otherwise disposed of other lands equivalent thereto shall be granted to the State, but the courts had held that the States were entitled to their lands in the Indian country, and hence, in the light of these holdings, this statute was passed which gave the States the option to take the lands or to take lieu lands. The act specifically provides that if the State selects lieu lands, "it shall be a waiver to its right to said sections," *i. e.*, in the Indian country, and to make it more certain that the States had a right to those lands it provided "that nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian or other reservation, and the restoration of the lands therein embraced in the public domain, and then taking the sections 16 and 36 in place therein; but nothing in this proviso shall be construed as conferring any right not now existing."

But the counsel argues in his brief that the provision of this statute as to lands included within Indian, military, or other reservations means, not lands as a part of the reservation, but isolated pieces of land near the reservation to which the State had already received title and desired to surrender it in consideration of receiving other lands in lieu thereof, and quotes a decision of the Secretary of the Interior to this effect.

This construction is clearly at variance with the terms of the act. The act provides:

"And other lands of equal acreage are also hereby appropriated and granted and may be selected by said State or Territory where sections 16 and 36 are mineral land, or are included within any Indian, military or other reservation, or are otherwise disposed of by the United States."

If the lands were contiguous to, but not a part of the Indian or military reservation, and the surveys had been made, the title would absolutely vest in the State, and neither Congress nor the President would have any authority whatever to create a military reservation out of it. Hence the claim made in the brief of counsel, on page 34, that this has reference to Indian or military reservations created after the survey, is entirely without merit.

THE ACT OF 1889 NOT TO BE CONSTRUED AS A TREATY.

We do not concede that the construction of the act of 1889 is in any respect dependent upon the understanding of the Indians affected by it. That act was a manifestation of the policy of the Government in respect to the Indians, and it cannot be distinguished as an act of legislation, so far as rules of construction are concerned, from any other statute. The Indians may or may not have properly construed it, but clearly its terms are not to be enlarged or restricted by any meaning which they may have given it.

Counsel has fallen into what appears to us an error in assuming that the act is a treaty to be construed in the light of the doctrine announced in the several cases which he cites. It is a law pure and simple, and, like many another law, prescribes duties and measures rights. In none of the cases cited was there involved the present question, but in all of them it was the meaning of the terms which the parties themselves had adopted in framing their agreement. In such a case it is both wise and just to require that language be construed according to the understanding of unlettered savages. But where is the analogy

between a treaty so entered into and an act of Congress emanating *sua sponte* from that body?

The act of 1889 *contemplated an actual cession by the Indians.*

From the contention that the act of 1889 merely contemplates a change in form and not in substance of the pre-existing status of the lands in question we dissent. If that act means anything, as construed by the defendants, it is that there is to be a complete and perpetual destruction of the State's right to the original sections. The fee is to pass forever beyond the power of the United States to vest it in the State. It is a radical overthrow of the right ever accorded to States under such grants and implicitly relied on by the State of Minnesota, to await the extinguishment of the grant for its enjoyment.

While it is true that the State had no power to remove Indian tribes or to possess school sections during Indian occupancy, it was justified in the belief, by the whole history of governmental dealings with States enjoying similar grants, that the high moral obligation attaching to the grant to her would be fulfilled.

No sentimental consideration based upon the enfeebled or impoverished condition of Indian tribes can affect the question. And if we were now disposed to enter upon a discussion of the wisdom of a policy which was sought to preserve the tribal status of the Indian, it would not be difficult to show that it has proven a wretched failure. Indeed, the act of 1889 admits it and is a wide departure from a previously long pursued policy of government.

Not a word appears in the act of 1889 expressly referring to school sections. We therefore respectfully submit that it was the manifest purpose of Congress to refrain from any disturbance of its well-settled policy with respect to schools. Its silence upon the subject is an admission that

the legislation of 1889 was to be construed and given effect according to the usual rules of construction.

Nor is it accurate to say that the act of 1889 does not contemplate an absolute extinguishment of the Indian right. Whether we regard the Red Lake reservation as a lawfully constituted Indian reservation or mere Indian country, it was thereafter to lose that character. The Indian was to be evolved from a condition of pupilage to citizenship. He was to acquire an indefeasible title to specific lands which in time would pass from governmental control. Lands not allotted were to be sold and the proceeds thereof were to constitute a fund which in fifty years was to be distributed to the members of the respective tribes without qualification or limitation as to their using the same. Lands of whites and Indians were to be intermixed, and whites and reds were to become members of the same communities. In short, the reservation was to pass away, and the Indian was to enter upon a new life, under new conditions and a radically changed environment.

If this did not mean the extinguishment of the Indian title as those terms have been employed in many statutes and judicial and departmental decisions and opinions, we have failed to understand their meaning.

Comments on the Decision of the Secretary of the Interior, Attached to Defendants' Brief.

Some little comment upon the ground of Secretary Hitchcock's decision in denying the State sections 16 and 36 in question may be useful. We have already invited the attention of the court to the opinion of Hon. Thomas H. Carter, in which he held to the contrary. Mr. Carter, in his opinion, holds that it was the intention of Congress in granting sections 16 and 36 to include all Indian reservations and unceded Indian country, and that as soon as the Indian title became extinguished the right of the State

thereto attached. Of course, the particular sections would have to be identified by a survey. He cites the decisions of the Land Department, and after a careful examination said:

"The above decisions, taken in connection with the act of February 28, 1891, amending sections 2275 and 2276 of the Revised Statutes, leave no room for doubt that, under the provisions of the act of February 26, 1857, for the admission of the State of Minnesota into the Union, said State is entitled to the 16th and 36th sections in every township within the Indian reservations in said State upon the extinguishment of the Indian title and the survey of the lands under the direction of the United States Government."

Secretary Hitchcock, however, held to the contrary. He based his opinion upon the fact that the joint resolution of March 3, 1857, modified the proposition of Congress which was accepted by the State, and that the provision "reserved for public uses," in the said resolution of March 3, included the disposition of the entire Indian country. We do not think that the joint resolution of 1857 changed the proposition made to the State and accepted in the constitution, but whether it did or not, we do not think that Congress had in mind in that resolution the disposition of an entire Indian country like the case at bar. Again, the honorable Secretary tries to distinguish the case of Beecher *vs.* Wetherbee, 95 U. S., 517, and says that in that case the survey was actually made and the title vested in the State before the treaty was made which set aside the lands for the benefit of the Stockbridge Indians. He says:

"It is shown in the opinion in that case that the section 16 there in controversy was identified by survey in May or June, 1854, so that the title thereupon passed to the State beyond the power of revocation by Congress, while the treaty establishing the reservation which was claimed to except the land from the grant to the State, did not take effect until in August following."

Here again he is in error. A reference to the fact in that case will show that the treaty concluded with the Menomonees on February 8, 1831, provided that two townships on the east side of Winnebago lake should be ceded for the use of the Stockbridge and Munsee Indians. We think this decision is directly contrary to one which he rendered later in the case of the Abandoned Military Reservations (29 Land Decisions, p. 418). In that case the grant to the Territory of Utah was substantially the same as the grant to the State of Minnesota, and provided:

"That where such sections or any part thereof have been sold or otherwise disposed of by or under authority of any act of Congress, other lands equivalent thereto," etc., "shall be selected."

On July 5, 1884, Congress passed an act which directed that whenever in the opinion of the President any lands within any military reservation had or should become useless for military purposes, he should cause the same to be placed under the control of the Secretary of the Interior for disposition as therein provided, and authorized the Secretary of the Interior to cause such lands to be surveyed and appraised, and to be sold at public sale to the highest bidder for cash at not less than the appraised value thereof, nor less than $1.25 per acre. It also provided that if they could not be sold at public sale, then they should be sold at private sale. It contained a provision for the benefit of certain settlers, whereby each settler would be entitled to enter under the homestead laws the lands occupied by him, not exceeding 160 acres. On August 23, 1894, another act was passed which read as follows:

"That all lands not already disposed of included within the limits of any abandoned military reservation heretofore placed under the control of the Secretary of the Interior for disposition under the act approved July fifth, eighteen hundred and eighty-four, the disposal of which has not been provided for by a subsequent act of Congress, where the area

exceeds five thousand acres, except such legal subdivisions as have Government improvements thereon, except also such other parts as are now or may be reserved for some public use, are hereby opened to settlement under the public land laws of the United States, and a preference right of entry for a period of six months from the date of this act shall be given all *bona fide* settlers who are now residing upon any agricultural lands in said reservations, and for a period of six months from the date of settlement when that shall occur after the date of this act: *Provided*, That persons who enter under the homestead law shall pay for such lands not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior."

The State of Utah claimed sections 16 and 36 in this military reservation. Secretary Hitchcock held the State was entitled to the lands. We invite the court's attention to the opinion of the Secretary, in which he in substance held that the acts of July 5, 1884, and August 23, 1894, directing the disposition of the lands, did not of themselves dispose of the lands, but rather prescribed what should guide and control the Land Department in its future disposition, and construed the direction of Congress not to include these lands to which the State was entitled, citing Cooper *vs.* Roberts and Ham *vs.* State of Missouri, cases upon which we largely rely in support of our position.

The Secretary said:

"The acts of July 5, 1884, and August 23, 1894, do not purport to make a disposition of the lands to which they apply, but rather to prescribe a method which shall guide and control the Land Department in the future disposition of such lands. The two acts present a combination of the features of the homestead law and the early law authorizing sales of the public lands; but the combination surely amounts to no more than would have resulted from opening the lands to sale or homestead. An entire new scheme might have been

applied to these lands to the exclusion of all features of the old laws, but, in the absence of some uniform policy of Congress amounting to an exception of a specific class of lands from the grant to the State, as in the instance of mineral lands (Mining Co. *vs.* Consolidated Mining Co., 102 U. S., 167), no matter what the form of the authorized disposition or the conditions upon which it was to be allowed, if at the time of the admission of the State into the Union it remained a mere unexecuted provision for their future sale or disposition, they were not 'sold or otherwise disposed of by or under the authority of any act of Congress' within the meaning of the school grant and hence the title passed to the State and no subsequent proceeding in the Land Department could divest that title. There has been no uniform policy of Congress respecting the disposition of lands within abandoned military reservations and certainly none such as amounts to a specific exception of that class of lands from a grant to a State for school purposes such as is here under consideration.

"The view here taken is in harmony with the construction placed upon the expression 'otherwise disposed of' as employed in the grants made to the several States for the support of common schools.

"In the case of Ham *vs.* State of Missouri, *supra*, in construing the school grant to the State of Missouri, which is practically the same as that found in the grant to the State of Utah, it is said:

"'Sale, necessarily signifying a legal sale by a competent authority, is a disposition, final and irrevocable, of the land. The phrase 'or otherwise disposed of' must signify some disposition of the property equally efficient, and equally incompatible with any right in the State, present or potential, as deducible from the act of 1820, and the ordinance of the same year.'

"A similar construction of the phrase 'otherwise disposed of' was made by the court in the case of Cooper *vs.* Roberts (*id.*, 173), involving a construction of a school grant to the State of Michigan. The construction thus made of this phrase has stood unchallenged as far as the Department is able to find."

The acts of Congress considered by the Secretary in this opinion directed that all lands within abandoned military

reservations not already disposed of should be opened for settlement under the public land laws of the United States, and yet the Secretary held, and correctly, that this should not be construed to direct a disposition of the school sections within said military reservations. He held that it was rather a method which should guide and control the Land Department in the future disposition of the lands, but the acts there considered were as specific as the act of 1889 that we are considering in the case at bar. Neither act provides for the disposition of sections 16 and 36.

Section 6 of the act of 1889 simply directs the agricultural lands to be disposed of to actual settlers under the homestead law. This is in effect saying that the lands should be subject to entry by homesteaders. What lands? Why, the lands that would under the law as the homestead laws then stood be subject to entry. The case stands as to agricultural lands, then, just where it would if the Indians had ceded them to the United States and the homestead laws applied. They would be subject to entry, but sections 16 and 36 would not be so subject to disposition under those laws. As to the pine lands, they were to be sold to the highest bidder, but there is no indication in section 5 of this act that the State's lands were to be thus sold. On the contrary, on February 26, 1896 (29 Statutes 17), Congress provided that sections 16 and 36 should not be sold until the claim of the State thereto should be determined. The decision of the Secretary in this case follows the rules laid down by this court.

Respectfully submitted.

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

STATE OF MINNESOTA *v.* ETHAN ALLEN HITCHCOCK, Secretary of the Interior, and Binger Hermann, Commissioner of the General Land Office.	No. 4, Original.

SUPPLEMENTAL BRIEF.

THIS COURT HAS ORIGINAL JURISDICTION TO ENTERTAIN THE BILL.

Although the original jurisdiction of the Supreme Court over this case has been conceded by the Government, it is deemed wise and proper by both parties to the controversy to prepare and submit a brief statement of their views of the law on this subject. The original jurisdiction of the Supreme Court of the United States is defined in section 2, Article III, of the Constitution, as follows:

> The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a

party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

We shall discuss this question under three separate heads:

First. That this is an action between a State and citizens of another State, within the meaning of the Constitution.

Second. That for purposes of determining the jurisdictional question, this suit is not one against the United States, within the decisions of this court.

Third. That the failure to join the Chippewa Indians as parties defendant can not affect the jurisdiction of the court.

I.

THIS IS A SUIT BETWEEN A STATE AND CITIZENS OF ANOTHER STATE WITHIN THE MEANING OF THE DECISIONS.

There can be no doubt that on the face of the bill the proposition above laid down is correct. The action

was brought by the State of Minnesota against Ethan Allen Hitchcock, a citizen of the State of Missouri, and Binger Hermann, a citizen of the State of Oregon. It may, however, be suggested that these parties defendant are officers of the Government, and as such have no citizenship, or, that they are representatives of the Chippewa Indians, and that the citizenship of the Indians should not be taken into account.

Conceding that these defendants are sued in their representative capacities, we think it is well settled that in construing the clauses of the Constitution hereinabove quoted the citizenship of the parties named on the record is conclusive, and that jurisdiction is neither given nor ousted by the relative situation of the parties concerned in interest.

Osborn v. *United States Bank*, 9 Wheat., 738, 856;

Foster's Federal Practice, 2d ed., vol. 1, sec. 19;

Bonnafee v. *Williams*, 3 How., 574;

Coal Co. v. *Blatchford*, 11 Wall., 172;

Childress v. *Emory*, 8 Wheat., 642;

Rice v. *Houston, Admr.*, 13 Wall., 66;

Dodge v. *Tulleys*, 144 U. S., 451, 456;

Davies v. *Lathrop*, 12 Fed., 353;

Harper v. *Norfolk & Western Ry. Co.*, 36 Fed., 102;

Shirk v. *City of Lafayette*, 52 Fed., 857.

In *Rice* v. *Houston* (*supra*), it is held that the actual citizenship of the executor or administrator controlled the jurisdiction of the court, regardless of the citizenship of the intestate or the heirs.

To the same effect was *Childress* v. *Emory* (*supra*), and other authorities cited.

In the case of *Dodge* v. *Tulleys* (*supra*), it was held that the fact that the beneficiary under a trust deed may be a citizen of the same State as the defendant, does not defeat the jurisdiction of the Federal court: that the jurisdictional question is controlled by the citizenship of the parties to the record.

To the same effect is *Bonnafee* v. *Williams* (*supra*), and other cases.

The above cases, together with those which we hereafter cite under the next heading, show conclusively that this action is against these officials personally, and that their personal citizenship should be the determining feature in any controversy as to jurisdiction. But at this point attention is specially invited to what is said in *Warner Valley Stock Co.* v. *Smith* (165 U. S., 28, *32*), respecting the nature of a suit like this.

II.

FOR PURPOSES OF DETERMINING THE JURISDICTIONAL QUESTION, THIS SUIT IS NOT TO BE DEEMED ONE AGAINST THE UNITED STATES.

It will be claimed that the United States is the real party in interest in this suit, and therefore is to be regarded as the practical defendant. If this is the proper view, then there would be, to say the least, grave doubts as to the original jurisdiction of this court to entertain the bill. The Constitution, above quoted, declares that "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State

shall be a party, the Supreme Court shall have original jurisdiction."

To be sure, even if the United States should be deemed the real defendant here, the suit would still be one "in which a State shall be a party," but we apprehend that the phrase, "those in which the State shall be a party," is to be construed with reference to the previous paragraph, in which actions where a State is a party are specifically enumerated. In that enumeration there is no provision made for a suit between a State and the United States. Consequently, it might well be held that such a suit would not be within the original jurisdiction of the Supreme Court.

It is, however, well settled that the United States is not the defendant within the decisions of this court. The question here suggested received very elaborate consideration by Chief Justice Marshall in the case of *Osborn* v. *United States Bank* (*supra*). In that case the State of Ohio had levied a tax upon the branch of the Bank of the United States located in that State, which the bank refused to pay. Osborn, the auditor of the State, being about to proceed to collect the State tax by a seizure of the money of the bank in its vaults, an injunction was sued out against him in the circuit court of the United States on the prayer of the bank. Subsequently, an amended bill was filed, alleging that the said Osborn had so seized $100,000, and had delivered the same to the treasurer of the State, one Curry, who afterwards turned the money over to his successor, one Sullivan. Both Curry and Sullivan were

made defendants as well as Osborn and his assistant, Harper. It was conceded that the State of Ohio, though not made a defendant to the bill, was the real party in interest. It was also conceded that the State could not be sued. On this state of facts it was earnestly argued that, since all the parties sued were the officers of the State and since the suit involved acts done in their official character and in obedience to the laws of the State, the complainant was attempting to accomplish by indirection what he could not do directly. Chief Justice Marshall gave this objection extremely careful consideration, and in the course of a lengthy opinion held that in deciding a question of jurisdiction where jurisdiction depends upon parties to the litigation, the court should limit itself to an inspection of the record. He said:

> The process is substantially, though not in form, against the State, * * * and the direct interest of the State in the suit is admitted; and had it been in the power of the bank to make it a party, perhaps no decree ought to have been pronounced in the cause until the State was before the court. But this was not in the power of the bank, * * * and the very difficult question is to be decided, whether, in such a case, the court may act upon agents employed by the State, and on the property in their hands.
>
> In answering this question he says: "A denial of jurisdiction forbids all inquiry into the nature of the case. It applies to cases perfectly clear in themselves; to cases where the Government

is in the exercise of its best-established and most essential powers, as well as to those which may be deemed questionable. It asserts that the agents of a State, alleging the authority of a law void in itself because repugnant to the Constitution, may arrest the execution of any law in the United States." Again: "The bank contends that in all cases in which jurisdiction depends on the character of the party, reference is made to the party on the record, not to one who may be interested, but is not shown by the record to be a party." "If this question were to be determined on the authority of English decisions it is believed that no case can be adduced where any person can be considered as a party who is not made so in the record." Again: "In cases where a State is a party on the record the question of jurisdiction is decided by inspection. If jurisdiction depend not on this plain fact, but on the interest of the State, what rule has the Constitution given by which this interest is to be settled by the court? If so, the curious anomaly is presented of a court examining the whole testimony of a cause, inquiring into and deciding on the extent of a State's interest without having a right to exercise any jurisdiction in the case. Can this inquiry be made without the exercise of jurisdiction?"

The doctrine of *Osborn* v. *Bank of the United States* has been followed in numerous cases:

Davis v. *Gray*, 16 Wall., 203;
Tomlinson v. *Branch*, 15 Wall., 460;
Litchfield v. *Webster*, 101 U. S., 773;
United States v. *Lee*, 106 U. S., 212;

Allen v. *B. & O. R. R.*, 114 U. S., 311;
Board of Liquidation v. *McComb*, 92 U. S., 531;
Poindexter v. *Greenhow*, 114 U. S., 270;
Pennoyer v. *McConnaughy*, 140 U. S., 1;
Illinois Central R. R. Co. v. *Adams*, 180 U. S., 28, 37.

In *Davis* v. *Gray* (*supra*) a citizen of New York filed his bill in the circuit court of the United States for the district of Texas against Davis, the governor of the State, and Kuechler, Commissioner of the General Land Office, to restrain them from selling the lands which the railroad claimed as a part of its grant. To this bill the defendants demurred, on the ground that the court had no jurisdiction, because the same was in effect a suit against the State. The court, restating the propositions decided in *Osborn* v. *The Bank*, said:

> The circuit court of the United States, in a proper case in equity, may enjoin the State officer from executing a State law in conflict with the Constitution or a statute of the United States, when such execution will violate the rights of the complainant. * * *
>
> In deciding who are parties to the suit the court will not look beyond the record. Making a State officer a party does not make the State a party, although her law may have prompted his action, and a State may stand behind him as the real party in interest. A State can be made a party only by shaping the bill expressly with that view, as where individuals or corporations are intended to be put in that relation to the case.

In *Poindexter* v. *Greenhow* (*supra*) Poindexter tendered to the treasurer of Virginia coupons, as provided by the act of 1871, in payment of taxes. They were refused, and his property was seized for taxes. This was an action against Greenhow, the treasurer, before the police justice, for the value of a desk so seized. It was claimed that this was a suit against the State; that the tax collector was sued as an officer and agent of the State engaged in collecting its revenues under a valid law; that he was guilty of no wrong, but acted only in an official capacity, representing the State and obeying the commands of a statute of the State, and that if any wrong had been done it was by the State. The court held that an officer of the State who seeks to substitute the State, or to defend on the ground that the State has adopted his act and exonerated him, must produce a valid law which authorizes his acts. If he is acting under an unconstitutional act, or under an act which does not furnish sufficient authority, or without authority at all, his acts are personal, although what he does he claims to do as an officer of the State.

In *Pennoyer* v. *McConnaughy* (*supra*), a suit was brought against the governor, secretary of state, and treasurer of the State of Oregon, who constituted a board of commissioners for the sale of school lands, to enjoin them from selling and disposing of the swamp lands claimed by this complainant. The defendant claimed that they were selling the lands pursuant to a law of the State, and as such were acting as officers of the State. The court held that the law under which

they were claiming to act was insufficient authority, and sustained the jurisdiction.

These authorities, holding that a suit to enjoin a State official is not a suit against a State, apply with equal force to a suit to enjoin a Government official, because the United States can not be sued without its own consent, which consent can only be given by an act of Congress. (*United States* v. *Lee*, 106 U. S., 216.)

We do not wish to be understood as asserting that an action brought against an official of a State or of the United States should in all cases be regarded as an action against the official personally, rather than as an action against the State or the National Government, as the case may be. Any attempt to control a public official in the exercise of his discretionary powers will, of course, be treated as to all intents and purposes an action against the political body which the officer represents. There is no doubt that the officials of a State may in certain aspects stand for the State, representing its action and liability. Wherever these aspects are drawn into controversy, the State, though not a party to the record, will doubtless be the real party against which the judgment would operate. So also, in the cases where proceedings are instituted against an official of the State of such nature as to involve a conflict with the political department of the Government, the bill will be dismissed.

But the class of cases above cited, whose authority we invoke and within whose doctrine we clearly come, hold that where a suit is brought against defendants

who, claiming to act as officers of a State or of the United States, and under the color of an unconstitutional statute or a statute which does not furnish authority, or who act wholly without authority, commit acts of wrong and injury to the rights and property of the complainant, such suit is not an action against the State, but is rather one against the officers personally, in which case their citizenship would determine any question of jurisdiction.

In those cases where the jurisdiction of this court has been invoked to enjoin the action or threatened action of Government officials, the original jurisdiction of this court has been not only exercised but expressly conceded.

State of Mississippi v. *Johnson*, 4 Wall., 474;
State of Georgia v. *Stanton*, 6 Wall., 75;

The case of *Mississippi* v. *Johnson* was a motion for leave to file a bill in the name of the State of Mississippi against Andrew Johnson (specially therein alleged to be a citizen of Tennessee and President of the United States), and his officers and agents appointed for that purpose, to prevent them from carrying out the so-called reconstruction act of Congress. Of course the citizenship of the President was the only ground on which the jurisdiction could possibly have been invoked, and if this court had not original jurisdiction this was a complete answer to the motion for leave to file the bill. Instead of holding, however, that the case did not come within the court's original jurisdiction, and therefore denying the motion forthwith, the

case was disposed of by the consideration and decision of other questions of such delicacy and importance as to forbid their examination in any case not imperatively demanding it. The court held that the acts sought to be enjoined were the acts of the executive head of the Government in the exercise of his political duties under the acts of Congress. The court said:

> In is true that the State may file an original bill in this court, and it may be true in some cases that such a bill may be filed against the United States; but we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties, and that no such bill ought to be received by us.

The case of *Georgia* v. *Stanton* was a similar case. A bill was filed against Stanton, Secretary of War, General Grant, General of the Army, and Pope, major-general, assigned to the command of the third military district, consisting of the States of Georgia, Florida, and Alabama, to enjoin them from carrying out the several provisions of the reconstruction act. The defendants moved to dismiss the bill for want of jurisdiction. The first objection made was as to the parties. It was claimed that they were sued as officers of the United States and not as individuals, and that they had no residence, no State citizenship within the meaning of the Constitution of the United States. The next objection made was as to the nature of the right set up in the bill, whether the acts threatened were such acts as any court would interfere with. The

court held that the requisite citizenship existed to give that court jurisdiction, but held that the court had no jurisdiction over the subject-matter. The court said:

> By the second section of the third article of the Constitution "the judicial power extends to all cases, in law and equity, arising under the Constitution, the laws of the United States," etc., and as applicable to the case in hand, "to controversies between a State and citizens of another State," which controversies, under the judiciary act, may be brought in the first instance before this court in the exercise of its original jurisdiction, and we agree that the bill filed presents a case, which, if it be the subject of judicial cognizance, would, in form, come under a familiar head of equity jurisdiction; that is, jurisdiction to grant an injunction to restrain a party from a wrong or injury to the rights of another, where the danger, actual or threatened, is irreparable or the remedy at law inadequate. But, according to the course of proceeding under this head in equity, in order to entitle the party to the remedy, a case must be presented appropriate for the exercise of judicial power; the rights in danger, as we have seen, must be rights which do not belong to the jurisdiction of a court, either in law or equity.

In the *Wheeling Bridge case* (13 How., 518) the court says, at page 560:

> From the dignity of the State the Constitution gives it the right to bring an original suit in this court.

The case at bar is one of the cases most suitable for

the invocation of this original jurisdiction. Manifestly the State can appeal to no other court for an injunction against this threatened action, unless, possibly, it be the courts of the District of Columbia; but this important question would certainly not stop in those courts. The jurisdiction was conferred upon this court for the very purpose of enabling the several States to bring these great controversies into a tribunal in keeping with the dignity of a State under the Constitution, and for the further purpose of removing such controversies from courts which might perhaps be influenced by local prejudice. The judicial history of this country shows that such controversies are few and usually of great importance.

We have already seen that the acts we are seeking to enjoin are not matters of discretion with the Secretary of the Interior, or acts in carrying out the political duties of an officer of the Government; we are seeking to enjoin him from clouding the title of lands which we claim have passed beyond the Land Department, and the fee of which is vested in the State of Minnesota. Simply to illustrate this question, we call the court's attention to the fact that when this bill was filed the surveys had been made in this Indian country; that no patent, no certificate, no action of the Secretary of the Interior or of the Commissioner of the General Land Office was necessary to vest the title in the State, but that the lands had passed beyond the control of the Secretary, and his action in allowing settlers to homestead these lands and issuing to them

patents would tend to cloud our title, and should be enjoined. This court has passed upon this question many times.

Brown v. *Hitchcock*, 173 U. S., 473;
Warner v. *Smith*, 165 U. S.. 28;
United States v. *Schurz*, 102 U. S., 378;
Noble v. *Union River Logging R. R. Co.*, 147 U. S., 165.

In *Brown* v. *Hitchcock* the court declined to issue the injunction because the title of the lands was still in the Government. It required a patent to pass the fee of the swamp lands to the State, and the court would not interfere with the administration of the land department while it still retained jurisdiction over the subject-matter, but recognized the distinction we refer to and cited authorities thereon.

In *United States* v. *Schurz* (*supra*) the court held that the lands having ceased to be a part of the public domain the Secretary's jurisdiction to determine any conflicting claim to them had absolutely ceased, and his action might be controlled.

In *Noble* v. *Union River Logging R. R. Co.* (*supra*) an injunction was issued to prevent the Secretary of the Interior from interfering with the title which had already vested.

The case of *Warner Valley Stock Co.* v. *Smith* (*supra*) was a bill in equity to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from revoking the action of their predecessors in office in certifying swamp lands to the State of Oregon,

claiming that the lands had passed beyond the jurisdiction of the Interior Department. The bill was dismissed because, pending the decision of the case, Hoke Smith, the then Secretary of the Interior, had gone out of office, but the right to grant the injunction was not questioned. Congress subsequently passed an act authorizing the continuance of the action against the succeeding Secretary.

III.

THE FAILURE TO JOIN THE CHIPPEWA INDIANS AS PARTIES DEFENDANT CAN NOT AFFECT THE JURISDICTION OF THE COURT.

As stated by the counsel for the defendants in his oral argument, it was suggested in the answer in this cause that the court had no jurisdiction by reason of the facts that the Chippewa Indians in Minnesota are necessary parties, and that some of them are citizens. This objection is not insisted on by the counsel, but, nevertheless, we deem it wise to submit the following suggestions:

There are insuperable difficulties in the way of joining the Indians as defendants in this action. In the first place, they are too numerous; it would be impossible to join them and to secure the names of all the Chippewa Indians in Minnesota, not to speak of securing service upon them. In the second place, assuming that it is possible to secure the names, or even join a few as representatives of the whole body, such a course would oust the jurisdiction of this court. There is no court whose process could reach the Indians which

could have jurisdiction to restrain the defendants from disposing of or clouding the title to these lands. The process of the circuit court of Minnesota would not run to the defendants; the process of the courts of the District of Columbia would not run to the Indians. But the Indians are not necessary parties in any event. To be sure, the money realized from a sale of the timber and from the homestead settlements to be made in the future is from time to time to be paid into the Treasury of the United States. The United States is the owner of the money. To be sure, it is deposited in the Treasury to the credit of the Indians, and is to draw interest at 5 per cent. After paying the expenses, one-half of the interest for a period of fifty years is to be paid annually in equal shares to the heads of families and guardians of orphan minors for their issue, one-fourth of the interest is to be paid annually in cash in equal shares per capita to all other classes of Indians, and one-fourth is to be used for the establishment of schools. At the expiration of the fifty years said permanent fund is to be divided among the Chippewa Indians and their issue then living, in cash in equal shares, etc.

Manifestly it is impossible to make parties to this suit the future beneficiaries of this fund. The present heads of families can not very well represent a generation unborn. But beyond all of this, the Indian had no title to the land. His right is merely possessory. The proceeds of these homestead entries and sale of

timber is a gift from the Government to all Chippewa Indians in Minnesota—not only to those residing within the boundaries of the country in question in this case, but to the Chippewa Indians residing on the other reservations in the State. We merely mention this as showing that this is an appropriation of funds for the support, maintenance, and benefit of the Indians, in which the title is in the United States, and in which no particular Indian has such an interest as to make him a necessary party to this record.

The United States through its agents appears as a natural guardian and proper representative of the Indians. Throughout the long course of decision in this court it has been held that the relation between the Government and the Indians is one similar to that of guardian and ward, and that the Indians may be looked upon as in a state of pupilage. This was laid down in very emphatic terms by Chief Justice Marshall in 1831 in the case of the *Cherokee Nation* against *The State of Georgia* (5 Peters, 1). In that case a bill was brought by the Cherokee Nation praying an injunction to restrain the State of Georgia from the execution of certain laws of that State. The objection was raised that an Indian tribe or nation, such as the Cherokee Nation, was not a foreign nation within the meaning of the Constitution, and that therefore the Cherokees could not sue in this manner in the United States courts. It was held that the objection was well taken. In the course of his opinion the learned Chief Justice

took occasion to describe the legal status of Indians in general. He said:

> They may, more correctly perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.
>
> They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory and an act of hostility.

The same doctrine was laid down again in the following year by Chief Justice Marshall in *Worcester* v. *State of Georgia* (6 Peters, 515).

It may be admitted that the executive and legislative departments of the Government were very slow to recognize the principles which were so clearly enunciated in the above-mentioned decisions. From the period of the foundation of the Government down to the year 1871 the practice was to deal with the Indian tribes by means of treaties; thus, so far as outward forms were concerned, the Indians would

appear to be separate and independent national entities. It is safe to say, however, that the treaty system had come to be a mere farce long before it was done away with. It was always recognized as a matter of actual practice that the Indians were in a state of pupilage and would be treated just as the sovereign power might see fit to treat them. The views laid down by Chief Justice Marshall in the early cases represented the actual practice even though the outward form seemed to betoken a different state of affairs.

In 1871 (16 Stat., p. 566) Congress passed an act reciting that henceforward the Indian tribes should not be negotiated with by means of treaty, but that all matters respecting the Indians should be the subject of ordinary Congressional enactment. This step was regarded by General Walker, formerly Commissioner of Indian Affairs, as a fatal blow to tribal autonomy. Logically it was. As a matter of fact, however, it was the result of a struggle between the two Houses of Congress for control over Indian affairs. Hitherto, while the treaty-making system was in force, the Senate had been supreme, but under the new arrangement the House was to claim a share in the settlement of all such questions.

With the decisions in this court from the time of Marshall to the eighties we need not concern ourselves further than to say that the doctrine first laid down remained undisturbed. The Indian question was not particularly imminent during those years.

In 1884, in *Elk* v. *Wilkins* (112 U. S., 94), the question was raised in this court whether an Indian, born a member of one of the Indian tribes, became a citizen of the United States within the meaning of the first section of the fourteenth amendment merely by reason of his birth within the United States and of his afterwards voluntarily separating himself from his tribe and taking up his residence among white citizens. The question was resolved in the negative, the court holding that the Indian was not "born in the United States and subject to the jurisdiction thereof" within the meaning of that section. Justice Gray, speaking for the court, said:

> The Indian tribes being within the territorial limits of the United States were not, strictly speaking, foreign States; but they were alien nations, distinct political communities, with whom the United States might and habitually did deal, as they thought fit, either through treaties made by the President and Senate, or through acts of Congress in the ordinary forms of legislation. The members of those tribes owed immediate allegiance to their several tribes, and were not part of the people of the United States. They were in a dependent condition, a state of pupilage, resembling that of a ward to his guardian. Indians and their property, exempt from taxation by treaty or statute of the United States, could not be taxed by any State. General acts of Congress did not apply to Indians, unless so expressed as to clearly manifest an intention to include them. * * *

In 1885 Congress took a further step in the process of assuming direct control over the Indians by providing that thereafter Indians should be punished for committing upon Indians, or others, any one of the seven leading crimes. The principle upon which this statute was framed was that the United States had full jurisdiction over the Indians upon their reservation whether in a State or Territory. The constitutionality of this statute was at one attacked. There had been various dicta in previous decisions of the court which seemed to warrant an interference inimical to the validity of the statute.

In 1886 this court took occasion, in the case of the *United States* v. *Kagama* (118 U. S., 375), to put the entire question at rest. The case arose on a demurrer to an indictment against two Indians for murder committed on an Indian reservation in the State of California, the person murdered being also an Indian of the said reservation. The crime was clearly one within the purview of the statute, and the principal question to be determined in the case was whether the statute was valid. In a very careful opinion delivered by Mr. Justice Miller, the court reviewed the earlier cases and decided in favor of the constitutionality of the law. The court said:

> It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance

> to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen. * * *
>
> The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection as well as to the safety of those among whom they dwell. It must exist in that government because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

The decision in *The United States* v. *Kagama* was a clear and decisive enunciation of the law, and has been followed ever since. While there may have been some doubt in the minds of many as to the true status of the Indian prior to that time, it can not well be said that the question remained open to argument after that case was decided.

By that decision the duty and the responsibility were brought home to the Government, and all that

has been done since 1866 with regard to the government and control of the Indians has been in full accord with the principles laid down by the Supreme Court at that time.

The final stage in the development of this subject is found in the Dawes Act, passed in February, 1887, a few months after the decision above referred to. This act opened up the way for the final settlement of the whole Indian question. We do not deem it necessary to go into the details of that legislation. The net result of it was to confer upon the President power to make the Indian a landowner in severalty and a citizen of the United States even against his will.

It will be noticed from the above summary of the course of decision and legislation on the Indian question that all three departments of the Government have always maintained the theory that the Indian is a dependent subject, to be treated in all respects as a ward or an incompetent. Congress has repeatedly given evidence of its attitude as a guardian. Nothing could be more arbitrary than the legislation which has been referred to, and this court has signified its intention of following the political departments of the Government in all such matters. (*United States* v. *Holiday*, 3 Wall., 407.)

One or two of the later decisions may be mentioned to show that the doctrine of guardianship remains in force at the present day.

Cherokee Nation v. *Southern Kansas Ry. Co.*, 135 U. S., 641, 653;

Stephens v. *Cherokee Nation*, 174 U. S., 445, 483;

Jones v. *Meehan*, 175 U. S., 1;

United States v. *Flournoy Live Stock Co.*, 71 Fed., 576;

United States v. *Choctaw Nation*, 119 U. S., 1;

Barker v. *Harvey*, 181 U. S., 492.

The first of the cases above cited contains a very elaborate review of the authorities, and we recommend it to the attention of the court.

In *Jones* v. *Meehan* (*supra*), the court said:

> The Indian tribes within the limits of the United States are not foreign nations; though distinct political communities, they are in a dependent condition; and Chief Justice Marshall's description, that "they are in a state of pupilage" and "their relation to the United States resembles that of a ward to his guardian," has become more and more appropriate as they have grown less powerful and more dependent.

We have cited the case of the *United States* v. *Flournoy Live Stock Company* (*supra*), as showing that the state of pupilage has by no means disappeared under the operation of the Dawes Act; in other words, the fact that the Indians have become, or are becoming, citizens, is as yet unimportant. They are still "wards of the nation" and subject to the control of the National Government. In the case in 71 Federal, it was contended that because the Indians in question were declared to be citizens of the United States, all restrictions upon the right of alienation contained in the acts

of Congress under which the allotments in severalty were made were wholly void. The contention was overruled. It was held that citizenship, lapse of time, and the allotment of portions of reservations in severalty had not terminated the former relationship existing between the Government and the Indians. The Interior Department still retained supervision and control as before.

Besides this opinion by Judge Shiras, see also:

McKenna, J., in *Eells* v. *Ross*, 64 Fed., 417;
Smythe v. *Henry*, 41 Fed., 705;
Re Coombs, Ref'r, 127 Mass., 278;
United States v. *Logan*, 105 Fed., 240.

In all reason this should be so because the legislation itself presupposes the fact that the Indians were never more dependent than now. The act of January 14, 1889, which this court is here called upon to construe, is clearly indicative of the subordinate position to which the Indians have sunk. For example, Congress has provided in that act that the consent of two-thirds of these Chippewa Indians shall divest the whole tribe of its lands and bring about a cession thereof to the United States for the purposes named in the act. Such legislation enacted with respect to another community or class of persons would be regarded as high-handed in the extreme, yet enacted as it is, with respect to the Indians, it stands unquestioned.

In view of what Congress has done and in view of what this court has decided during the past hundred years, we say that the proposition that these Indians

are properly represented in this action brought in its present form is indisputable. The Interior Department, and through it the Government of the United States, has always been regarded as the true guardian and representative of the Indians. Can it be said that such legislation as we have mentioned is permissible, and at the same time be said that the Government can not appear for the Indians as a guardian ad litem? We feel that the historical aspect of the situation as we have outlined it is absolutely conclusive on this branch of the case.

The case is within the rule that a trustee may sue or be sued without the appearance of his beneficiary in the action, where the trust is of such a nature as to warrant the construction that the trustee has been authorized to appear in behalf of the beneficiary. The rule referred to has been laid down in—

Carey v. *Brown*, 92 U. S. 171;
Kerrison v. *Stewart*, 93 U. S. 155;
Vetterlein v. *Barnes*, 124 U. S. 168.

In *Kerrison* v. *Stewart* (*supra*), it was said:

> It can not be doubted, that under some circumstances, a trustee may represent his beneficiaries in all things relating to their common interest in the trust property. He may be invested with such powers and subjected to such obligations that those for whom he holds will be bound by what is done against him, as well as what is done by him. The difficulty lies in ascertaining whether he occupies such a position, not in determining its effect if he does.

> If he has been made such a representative, it is well settled that his beneficiaries are not necessary parties to a suit by him against a stranger to enforce the trust (*Shaw* v. *Norfolk Co. R. R. Co.*, 5 Gray, 171; *Bifield* v. *Taylor*, 1 Beat, 91; *Campbell* v. *R. R. Co.*, 1 Woods, 376; *Ashton* v. *Atlantic Bank*, 3 Allen, 220); or to one by a stranger against him to defeat it in whole or in part (*Rogers* v. *Rogers*, 3 Paige, 379; *Wakeman* v. *Grover*, 4 id., 34; *Winslow* v. *M. & P. R. R. Co.*, 4 Minn., 317; *Campbell* v. *Watson*, 8 Ohio, 500). In such cases the trustee is in court for and on behalf of the beneficiaries, and they, though not parties, are bound by the judgment, unless it is impeached for fraud or collusion between him and the adverse party.

In *Vetterlein* v. *Barnes* (*supra*) the action was one by a stranger against the trustee for the purpose of defeating the trust altogether. It was held that the beneficiary was not a necessary party.

> It is contended that the wife and children of Theodore H. Vetterlein were indispensable parties, and that it was an error to proceed to a final decree without having them made defendants. The general rule undoubtedly is that all persons materially interested in the result of a suit ought to be made parties, so that the court may "finally determine the entire controversy, and do complete justice by adjudging all the rights involved in it." (*Story* v. *Livingston*, 13 Pet., 359, 375; *Shields* v. *Barrow*, 17 How., 130, 139.) But in a suit brought against a trustee by a stranger for the purpose of defeating the trust

altogether, the beneficiaries are not necessary parties, if the trustee has such powers or is under such obligations, with respect to the execution of the trust, that "those for whom he holds will be bound by what is done against him as well as by what is done by him." In such cases of representation by trustees, the beneficiaries will be bound by the judgment, "unless it is impeached for fraud or collusion between him and the adverse party." (*Kerrison* v. *Stewart*, 93 U. S., 155, 160.)

In *Sears* v. *Hardy* (120 Mass., 524, 529) the court, after observing that who shall be made parties to a suit in equity can not always be determined by definite rules, but rests to some degree in the discretion of the court, said: "Generally speaking, however, to a suit against trustees to enforce the execution of a trust, cestuis que trust, claiming present interests directly opposed to those of the plaintiff, should be made parties, in order that they may have the opportunity themselves to defend their rights, and not be obliged to rely upon the defense made by the trustees, or to resort to a subsequent suit against the trustees or the plaintiff, or to take the risk of being bound by a decree rendered in their absence." But the rule is different where the claim of the plaintiff antedates the creation of the trust, and the suit is brought, not in recognition or furtherance of the trust, but in hostility to it, as fraudulent and void. In *Rogers* v. *Rogers* (3 Paige, 379), which was a suit by a judgment creditor to set aside as fraudulent an assignment by the debtor

> of his personal estate in trust for the payment of a debt to a particular bank, and to pay the residue of the proceeds thereof to other creditors of the assignor, it was objected, at the hearing, that the bank was not made a party defendant. The objection was held to be untenable, the chancellor observing: "As a general rule, the cestuis que trust, as well as the trustee, must be parties, especially where the object is to enforce a claim consistent with the validity of the trust. But where the complainant claims in opposition to the assignment or deed of trust, and seeks to set aside the same on the ground that it is fraudulent and void, he is at liberty to proceed against the fraudulent assignee or trustee, who is the holder of the legal estate in the property, without joining the cestui que trust. (*Wakeman* v. *Grover*, 4 Paige, 23; *Irwin* v. *Keen*, 3 Wharton, 347, 354, 355; *Therasson* v. *Hickok*, 37 Vt., 454; *Hunt* v. *Weiner*, 39 Ark., 70, 76; *Winslow* v. *Minnesota and Pacific Railroad Co.*, 4 Minn., 313, 316; *Tucker* v. *Zimmerman*, 61 Geo., 601.)

In the case at bar the Government is indisputably to be regarded, if not a guardian, at least a trustee for the Indians; furthermore, if the Government is to be looked upon as a trustee, it must be a trustee with the widest possible powers. This follows from the general course of dealing and the general relationship existing between the Government and the Indians. If there ever was a case where a trustee should be regarded as empowered to represent his cestui que trust in litigation, this certainly is such a case.

On analogy drawn from the rule excluding legatees and next of kin in bills for a debt or legacy brought against the personal representative of a deceased person the Indians need not be joined in this action. Adams in his Doctrine of Equity, pages 315, 316, says:

> The rule requiring the joinder of all persons whose interests the decree may affect is subject to two modifications, which at first sight appear to be exceptions, but which are in reality mere limitations of its effect, originating in the same principles as the rule itself. The first of these modifications is the exclusion of legatees or next of kin on bills for a debt or legacy against the personal representative. * * *
>
> The exclusion of legatees or next of kin on a bill for a debt or legacy against the personal representative originates in the assumption that such legatees or next of kin have in reality no interest in the object of the suit; for although they are in some sense concerned in it, yet it is only in the same sense in which every creditor is concerned in the management of his debtor's estate; viz, it is important to them that the ability to meet their claims should not be diminished; but the personal representative is not a trustee for them, nor have they any interest in the estate itself. If the claimants are not mere legatees, payable by the executor, but specific owners of the property itself, the ordinary rule applies; e. g., where they take as appointees under a married woman's will, or where their legacies are charged on real estate. In this latter instance, however, a modification

> has lately been introduced, assimilating to some extent a devisee on trust with a personal representative; and it is directed that in all suits concerning real estate which is vested by devise in trustees, who are competent to sell and to give discharges for the purchase money and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the same manner and to the same extent as the executors or administrators in suits concerning personal estate; and it shall not be necessary to make the persons beneficially interested parties to the suit. But the court may, at the hearing, require them to be joined if it shall think fit.

The rule here quoted and the reason of it are clearly applicable to the situation which we are considering. The position of the Indians in this case is analogous to that of legatees under a will. It is universally recognized that they have no title to the soil beyond that of occupancy. If the Government sees fit to take this land, sell it, and hold the proceeds in trust for them, it is a pure gift on the part of the Government. The State of Minnesota is practically in the position of a creditor of the Government seeking to subject the fund to its claim, which antedated that of the Indian, which in turn took its rise from the act of 1889.

So far as this question of jurisdiction could be settled by the legislative and executive departments of the Government, it has been put to rest by the act of March 2, 1901. (31 Stat., 950.)

AN ACT authorizing the Attorney-General, upon the request of the Secretary of the Interior, to appear in suits brought by States relative to school lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit heretofore or hereafter instituted in the Supreme Court of the United States to determine the right of a State to what are commonly known as school lands within any Indian reservation or any Indian cession where an Indian tribe claims any right to or interest in the lands in controversy, or in the disposition thereof by the United States, the right of such State may be fully tested and determined without making the Indian tribe, or any portion thereof, a party to the suit, if the Secretary of the Interior is made a party thereto; and the duty of representing and defending the right or interest of the Indian tribe, or any portion thereof, in the matter shall devolve upon the Attorney-General upon the request of such Secretary.

The question of the constitutionality of this act, if such question should ever be raised, we do not propose to argue at length at this time.

We assume that the act is valid and at any rate should be permitted to stand until attacked and held void. It would seem if Congress has power to pass an act, such as that of January 14, 1889, providing for the cession of Indian lands by a two-thirds vote of the Indians claiming such lands, then certainly Congress should be competent to enact a law permitting the Secretary of the Interior to represent the Indians in

litigation instituted in this court. If the act of March 2, 1901, is unconstitutional, then we say that most, if not all, of the legislation of the past fifty years with respect to the Indians is also bad. The position of the Indian as a "ward of the nation" is a final justification for the act of 1901, as it was for the act of 1871, the act of 1885, the act of 1887, and the act of 1889. The decisions of Justices Shiras and McKenna furnish a complete refutation of the argument that the Indian's rights as a citizen are being impaired. Citizenship does not yet carry with it emancipation from governmental guardianship.

This act also gives legislative recognition to this court's original jurisdiction of such a suit as this. True, the act does not use the words "original jurisdiction," but the language employed is their full equivalent. The provision declaring that the Indians need not be made parties shows that the jurisdiction which is being legislated about is original and not appellate. Then, how could a suit be *instituted* in this court except by invoking its original jurisdiction? The suit provided for is one "to determine the right of a State" and to which the Secretary of the Interior is to be a party, and, as shown by the context, a party defendant.

Respectfully submitted.

FRANK B. KELLOGG,
HENRY W. CHILDS,
Counsel for Complainant.

I join complainant's counsel in their discussion herein of the subject of this court's original jurisdiction of a suit like this.

WILLIS VAN DEVANTER,
Assistant Attorney-General.

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In the Supreme Court of the United States.

THE STATE OF MINNESOTA
v.
ETHAN ALLEN HITCHCOCK, SECRETARY of the Interior, and BINGER HERMANN, Commissioner of the General Land Office. } In equity.

THE ANSWER OF ETHAN ALLEN HITCHCOCK, SECRETARY OF THE INTERIOR, AND BINGER HERMANN, COMMISSIONER OF THE GENERAL LAND OFFICE, DEFENDANTS, TO THE BILL OF COMPLAINT OF THE STATE OF MINNESOTA, COMPLAINANT.

The defendants admit that the said Ethan Allen Hitchcock is Secretary of the Interior and is a citizen of the State of Missouri, and that the said Binger Hermann is Commissioner of the General Land Office, and is a citizen of the state of Oregon.

The defendants, disregarding the uncertainty in the bill of complaint of the complainant respecting the lands the title to which is intended to be made the subject of judicial inquiry in this suit, answer the said bill upon the belief that the lands the title to which is intended to be made the subject of such judicial inquiry are sections 16 and 36 in each township embraced in the district or

country designated as the "Red Lake Reservation" in the act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889 (25 Stat., 642), which district or country is more particularly bounded and described as follows, to wit:

Beginning at the point where the international boundary between the United States of America and the British Possessions in its easterly course intersects the westerly shore of the Lake of the Woods; thence in a direct line in a southwesterly direction to the head of Thief River; thence down the main channel of said Thief River to its mouth on the Red Lake River; thence in a southeasterly direction in a direct line toward the head of Wild Rice River to a point where such line intersects the northwestern boundary of a tract of country ceded to the United States of America by a treaty concluded at Washington on the 22d day of February, 1855, with the Mississippi Pillager and Lake Winnibigoshish bands of Chippewa Indians (10 Stat., 1165); thence in a straight line to the northern extremity of Turtle Lake; thence in a straight line to the source of Black River; thence down Black River to its mouth on Rainy Lake River, and thence westerly along the international boundary between the United States of America and the British Possessions to the point of beginning, according to the location and marking of such boundary lines by special surveys of the United States made for that purpose. And the defendants allege that, as nearly as can be approximated, considering that a large portion thereof still remains unsurveyed as hereinafter stated, said dis-

trict or country embraces 3,546,356 acres, or 154 townships, in which there are 308 sections numbered 16 and 36, containing 197,120 acres.

And the defendants also admit that by the eighteenth section of the act of Congress entitled "An act to establish the territorial government of Minnesota," approved March 3, 1849 (9 Stat., 403), it was enacted as follows:

> *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

The defendants also admit that by the fifth section of the act of Congress entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States," approved February 26, 1857 (11 Stat., 166), it was enacted as follows:

> SEC. 5. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit:
>
> *First*. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part

thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools.

And the defendants also admit that by the joint resolution of Congress entitled "A resolution relative to sections sixteen and thirty-six in the Territories of Minnesota, Kansas, and Nebraska," approved March 3, 1857 (11 Stat., 254), it was enacted as follows:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That where any settlements, by the erection of a dwelling house, or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas, and Nebraska, and in the States and Territories hereafter to be erected out of the same) before the said sections shall have been or shall be surveyed; or when such sections have been or may be selected or occupied as town sites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, or reserved for public uses before the survey, then other lands shall be selected by the proper authorities, in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for." And if such settler can bring himself, or herself, within the provisions of the act of fourth of September, eighteen hundred and forty-one, or the occupants of the town site be enabled to show a compliance

> with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes.

And the defendants allege that the said joint resolution was adopted by Congress and approved by the President before the acceptance by the people of the Territory of Minnesota of any of the propositions submitted by Congress to the people of that Territory by section 5 of said act of Congress of February 26, 1857.

And the defendants also admit that the people of the Territory of Minnesota, on the 13th day of October, 1857, adopted a constitution for the proposed State of Minnesota, in section 3 of article 2 of which it was declared (Statutes of Minnesota, 1894, vol. 1, LXXIV):

> The propositions contained in the act of Congress entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States," are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall nonresident proprietors be taxed higher than residents.

And the defendants allege that in adopting the said constitution the people of the Territory of Minnesota were acting under the authorization given by the said act of Congress of February 26, 1857, as modified and interpreted by said joint resolution of Congress of March 3, 1857, and that the propositions accepted by the people of the Territory of Minnesota in section 3 of article 2 of said constitution were the propositions submitted by Congress in section 5 of the said act of Congress of February 26, 1857, as modified and interpreted by the said joint resolution of Congress of March 3, 1857.

And the defendants also admit that by the act of Congress entitled, "An act for the admission of the State of Minnesota into the Union," approved May 15, 1858 (11 Stat., 285), the State of Minnesota was duly admitted into the Union on an equal footing with the original States in all respects whatever, and that by this last-named act of Congress it was, among other things, recited and enacted as follows:

> Whereas an act of Congress was passed February twenty-six, eighteen hundred and fifty-seven, entitled, An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States;" and whereas the people of said Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and State government, which is republican in form, and was ratified and adopted by the people at an election held on the

thirteenth day of October, eighteen hundred and fifty-seven, for that purpose: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

And the defendants allege that at the time of the passage of the said act of Congress of March 3, 1849, and at the time of the passage of the said act of Congress of February 26, 1857, and at the time of the passage of said joint resolution of Congress of March 3, 1857, and at the time of the adoption of a constitution for the proposed State of Minnesota by the people of the Territory of Minnesota, and at the time of the passage of the said act of Congress of May 11, 1858, admitting the State of Minnesota into the Union, the district or country hereinbefore described was unceded Indian lands, subject to the original right of occupancy of the Chippewa Indians; that all of said district or country remained unsurveyed until after the passage of the act of Congress of January 14, 1889, heretofore and hereinafter named, and until after the cession of March 4, 1890, hereinafter named, excepting that the exterior boundary lines of said district or country had been located and marked by special surveys made by the United States for that purpose; that a very large portion of the lands embraced in said district or country, to wit, approximately 1,093,737 acres, continue to be unsurveyed

at the date of this answer, although the work of surveying the same is now in progress; that by the treaty of October 2, 1863 (13 Stat., 667), and prior to the extension of the public surveys of the United States over any portion of said district or country the same was reserved for the use and occupancy of the Chippewa Indians, and this reservation was recognized and confirmed by the President of the United States in an order made by him March 18, 1879, enlarging what was then known as the White Earth Indian Reservation, and was further recognized and confirmed by Congress in said act of January 14, 1889, and in an act entitled "An act granting to the Duluth and Winnipeg Railroad Company a right of way through certain Indian reservations in Minnesota," approved June 2, 1890 (26 Stat., 126).

And the defendants also admit that no settlement has been made upon any part of any section 16 or 36 in said district or country, by the erection of a dwelling house or the cultivation of any portion thereof, and that no part of either of said sections has been selected or occupied as a town site.

And the defendants allege that under said act of Congress of January 14, 1889, such proceedings were had that, on March 4, 1890, with the approval of the President of the United States, and before the extension of the public surveys of the United States over any portion of said district or country, the Chippewa Indians in Minnesota, in the manner prescribed in said act, ceded and relinquished to the United States, for the purpose and upon the terms stated in said act, and not otherwise, a part of the lands embraced in said district or country,

containing approximately 2,882,401.87 acres, and that at the same time the remaining portion of said district or country, embracing approximately 663,954.22 acres, to wit, commencing at the point on Thief River where the same crosses the line between Marshall and Polk counties; thence easterly to the most northwesterly point of the upper Red Lake; thence easterly along the northerly shore of said upper Red Lake to a point due north of a point 1 mile east from the easterly end of lower Red Lake; thence due south to the last-named point; thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the lower Red Lake; thence south to a point from which a line extending west passes midway between what is called the "big marsh" and the sugar bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation, as the same had theretofore existed; thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNally & Co., of Chicago, Ill., was reserved for allotment in severalty to individual Indians, as provided in said act; and said defendants deny that said cession entirely extinguished the Indian title to any portion of said district or country, but allege that the conditions and restrictions placed by said act of Congress on January 14, 1889, upon the cession so made to the United States by

the Chippewa Indians in Minnesota on March 4, 1890, were such that the United States thereupon and thereby received and now holds the lands so ceded upon an express trust that the same shall be sold and disposed of for the purpose of establishing a fund which shall be the property of said Indians, and which shall be used and applied exclusively for their relief and civilization.

And said defendants allege that by reason of the matters hereinbefore admitted, shown, and alleged all of said district or country, including sections 16 and 36 therein, was, before the survey thereof, and still continues to be, set apart and appropriated by the United States for the relief and civilization of its wards, the Chippewa Indians in Minnesota, to the exclusion of all other purposes and persons, and that this was and is a reservation of said lands for public uses.

And said defendants deny that any lands embraced in sections numbered 16 or 36 in said district or country were, by the United States, granted to, or inured to, or became vested in the State of Minnesota, and allege that, by reason of the premises aforesaid, all of the lands in sections numbered 16 and 36, in said district or country, were and are excepted from the grant of school lands in place to said State.

And said defendants also admit that in the act of Congress entitled "An act to amend an act entitled 'An act for the relief and civilization of the Chippewa Indians in the State of Minnesota,'" approved February 26, 1896 (29 Stat., 17), it was enacted that—

> Sections numbered sixteen and thirty-six in each township so surveyed shall not be sold until the claim

of the State of Minnesota to the ownership of said sections as part of the school lands of said State shall have been determined.

But said defendants allege that the present Secretary of the Interior, one of the defendants herein, on May 9, 1899 (28 Land Decisions, 374), as the head of the Land Department of the United States, after due notice to the State of Minnesota and after a full presentation by said State of its claim to said lands, did deny and reject the claim of said State to sections 16 and 36 in said district or country; and the defendants allege that the said act of Congress of February 26, 1896, relates exclusively to the lands embraced in the cession of March 4, 1890, herein named, and does not affect any of the lands not embraced in that cession.

And the defendants also admit that after the cession of March 4, 1890, herein named, the succeeding Secretaries of the Interior and Commissioners of the General Land Office, including these defendants, have proceeded with the execution and administration of said acts of Congress of January 14, 1889, and February 26, 1896, and that at the time of the commencement of this suit these defendants were intending—and since the said denial and rejection by the Secretary of the Interior of the said claim of the State of Minnesota they have been intending—in the execution and administration of said acts of Congress, to dispose of all of the sections numbered 16 and 36 in said district or country, according to the respective provisions and requirements of said acts, to the entire denial and exclusion of any right of the State of Minnesota to any of said sections.

And the defendants admit that in due time after the passage of said act of Congress of January 14, 1889, the State of Minnesota notified the Secretary of the Interior and the Commissioner of the General Land Office that it claimed title to each and every section numbered 16 and 36 within said district or country, and that said State has ever since continued to assert said claim.

And the defendants deny that on or about September 7, 1891, or at any other time, the Commissioner of the General Land Office acknowledged or held that the title or right to any section numbered 16 or 36 within said district or country was in the State of Minnesota, but allege the facts to be that Cushman K. Davis, then a Senator in Congress from the State of Minnesota, and acting on behalf of that State, in three several letters addressed to the Commissioner of the General Land Office, the first of which bears date September 2, 1891, and the remaining two of which bear date September 3, 1891, notified such Commissioner of the claim of the State of Minnesota to said sections, and that the then Commissioner of the General Land Office, in a letter addressed to Senator Davis, bearing date September 9, 1891, did, without the approval or knowledge of the Secretary of the Interior, and without notice to the Chippewa Indians in Minnesota, or opportunity on their part to be heard, either directly, or through the Commissioner of Indian Affairs or the Secretary of the Interior, the officers charged with the supervision of Indian affairs, and without considering the said joint resolution of March 3, 1857, or the character of the said cession of March 4, 1890,

answer the said communications of Senator Davis by referring to the act of Congress of February 28, 1891, amending sections 2275 and 2276 of the Revised Statutes of the United States (26 Stat., 796), and then declaring:

> Said State is entitled to the sixteenth and thirty-sixth sections in every township within the Indian reservations in said State, upon the extinguishment of the Indian title and the survey of the lands under the direction of the United States Government, and to indemnity for those sections within the unceded portions of said reservations if the State shall elect to select such indemnity lands in preference to waiting for the Indian title to be extinguished in order that it may take those sections in place, in which event the selection of such indemnity lands by the State would be a waiver of the right to claim the said school sections in place.

And by reason of these matters the defendants allege that the action of the Commissioner of the General Land Office, had in September, 1891, to which complainant refers, is of no effect and can not affect the duties of these defendants in the premises or the rights of the Chippewa Indians in Minnesota to the lands in controversy.

As to sections numbered 16 and 36, embraced within the said cession of March 4, 1890, these defendants allege that no part thereof has been allotted to any Indian, or entered, sold, or disposed of as agricultural land, or pine land, or otherwise; that neither of these defendants, nor any of their predecessors, have sold or authorized the sale of any of the pine or other timber

growing thereon; or of any dead or down timber thereon; and that if any pine or other timber growing thereon, or any dead or down timber thereon, has been felled, cut, or removed, the same has been done without the permission or knowledge of either of these defendants or of any of their predecessors in office.

The defendants also admit that a large portion of said sections 16 and 36, but what portion they have not sufficient knowledge, information, or belief to enable them to state, is covered with pine timber in considerable quantity and of considerable value, but of what quantity and of what value they have not sufficient knowledge, information, or belief to enable them to state.

And the defendants also admit that about 2,547 of said Chippewa Indians in Minnesota, but the exact number these defendants can not state, have become citizens of the State of Minnesota, and, where of requisite age, have become electors of said State, but defendants allege that about 5,000 of said Indians have not yet become citizens of said State.

And, without conceding the materiality or relevancy thereof, the defendants do not have sufficient knowledge, information, or belief to enable them to answer whether said Chippewa Indians or their children or any of them are entitled to participate in the benefits of the school fund of such State, or whether the permanent or any other school fund of such State, on the 11th day of July, 1898, or at any other time, was $11,822,145.58, or any other amount, or has since increased in amount, or is invested in any interest-bearing securities, or whether

any amount produced by any such interest is distributed annually or otherwise among the school districts of the State, or among any of them, or whether the amount so distributed in the year 1897 was $772,947.50, or any other sum, or whether the amount so distributed increases every year, or at all, or whether the unsold school lands of said State amount to 1,327,434 acres, or to any other acreage, or whether the average value of sections 16 and 36 within the said cession of March 4, 1890, is more than $50 per acre.

As to sections numbered 16 and 36 in the portion of said district or country not embraced in the cession of March 4, 1890, but retained for allotment in severalty to Indians, these defendants allege that no part thereof has been allotted to any Indian, or entered, sold, or disposed of as agricultural land or pine land, or otherwise; that neither of these defendants, nor any of their predecessors in office, have sold or authorized the sale of any pine or other timber growing thereon, or of any dead or down timber thereon, excepting that, under the act of Congress of February 16, 1889 (25 Stat., 673), nine contracts were approved by the Commissioner of Indian Affairs and the Secretary of the Interior between March 7, 1890, and April 15, 1896, both inclusive, which authorized the cutting, sale, and removal, by various Chippewa Indians in Minnesota of dead and down timber from parts of that portion of said district or country not included in said cession of March 4, 1890, but retained for allotments in severalty to Indians, but that owing to the fact that the lands

covered by such contracts were not surveyed at the time, the descriptions of the lands embraced in such contracts were not given according to the public surveys, and these defendants do not have sufficient knowledge, information, or belief to enable them to answer whether any of said contracts embraced lands in sections numbered 16 or 36, or whether any timber was cut under any of said contracts from any of said sections; and excepting that, under the act of Congress of June 7, 1897 (30 Stat., 62, 90), the Commissioner of Indian Affairs and the Secretary of the Interior, on March 5, 1898, approved a contract with certain Chippewa Indians in Minnesota, authorizing them, during the logging seasons of 1897 and 1898, to sell, cut, haul, and deliver about 1,000,000 feet of pine saw logs, to be cut from dead timber, standing or fallen, on section 36, in township 153 north, of range 33 west, and four other sections in that vicinity not numbered 16 or 36, at a stated compensation of $5 per thousand feet; but these defendants have no knowledge, information, or belief as to how much or what timber was sold, cut, hauled, or delivered from said section 36 under this contract, or as to what was the value thereof, or as to what sum was received therefor by the United States or the Indians.

And the defendants deny that any other matter, cause, or thing in the complainant's bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants.

And by reason of the matters herein stated these defendants respectfully show unto the court:

1. That the Chippewa Indians in the State of Minnesota have such an interest in the matter here in controversy, and will be so directly and prejudicially affected by the granting of any portion of the relief sought by the complainant, that they are indispensable parties to this suit, in the absence of whom the court can not proceed.

2. That this suit is not within the original jurisdiction of this court for the reason that the subject-matter thereof is a controversy between the State of Minnesota and the Chippewa Indians in Minnesota, many of whom are citizens of that State.

3. That the complainant is not entitled to any relief against these defendants or either of them.

Wherefore these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ETHAN ALLEN HITCHCOCK,
Secretary of the Interior.

BINGER HERMANN,
Commissioner of the General Land Office.

WILLIS VAN DEVANTER,
Assistant Attorney-General,
Solicitor, and of Counsel for Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Ethan Allen Hitchcock, being first duly sworn, upon his oath deposes and says that he is the Secretary of the Interior, and as such officer is one of the defendants

named in the foregoing answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

ETHAN ALLEN HITCHCOCK.

Subscribed and sworn to before me this 21st day of May, 1900.

[NOTARIAL SEAL.] WM. H. DE LACY,
Notary Public.

O

No. 4 Orig.

Brf. of Atty. Gen. & Van DeVanter for Defendants.

Filed Oct. 28, 1901.

Office Supreme Court U.S.
FILED
OCT 28 1901
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE STATE OF MINNESOTA *v.* ETHAN ALLEN HITCHCOCK, SECRETARY of the Interior, and Binger Hermann, Commissioner of the General Land Office.	Original No. 4. In Equity.

BRIEF AND ARGUMENT FOR DEFENDANTS AND CHIPPEWA INDIANS (SEE ACT OF MARCH 2, 1901, 31 STAT., 950).

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE STATE OF MINNESOTA *v.* ETHAN ALLEN HITCHCOCK, SECRETARY of the Interior, and Binger Hermann, Commissioner of the General Land Office.	Original No. 4. In Equity.

BRIEF AND ARGUMENT FOR DEFENDANTS AND CHIPPEWA INDIANS (SEE ACT OF MARCH 2, 1901, 31 STAT., 950).

STATEMENT.

The State of Minnesota asserts title to sections 16 and 36 in each township in what was, on January 14, 1889, the Red Lake Indian Reservation, including that portion thereof which since then has been specially reserved for making allotments to Indians, and prays an injunction restraining defendants from allotting or selling these sections in administering the trust in favor of the Chippewa Indians created by the act of January 14, 1889 (25 Stat., 642).

The original reservation as existing at the date of said act embraced the following tract of country in northwestern Minnesota:

> Beginning at the point where the international boundary between the United States of America

and the British possessions in its easterly course intersects the westerly shore of the Lake of the Woods; thence in a direct line in a southwesterly direction to the head of Thief River; thence down the main channel of said Thief River to its mouth on the Red Lake River; thence in a southeasterly direction in a direct line toward the head of Wild Rice River to a point where such line intersects the northwestern boundary of a tract of country ceded to the United States of America by a treaty concluded at Washington on the 22d day of February, 1855, with the Mississippi Pillager and Lake Winnibigoshish bands of Chippewa Indians (10 Stat., 1165); thence in a straight line to the northern extremity of Turtle Lake; thence in a straight line to the source of Black River; thence down Black River to its mouth on Rainy Lake River, and thence westerly along the international boundary between the United States of America and the British possessions to the point of beginning, according to the location and marking of such boundary lines by special surveys of the United States made for that purpose.

That portion of the original reservation which, under the act of January 14, 1889, has been specially reserved for making Indian allotments, embraces the following:

Commencing at the point on Thief River where the same crosses the line between Marshall and Polk counties; thence easterly to the most northwesterly point of the upper Red Lake; thence easterly along the northerly shore of said upper Red Lake to a point due north of a point 1 mile east from the easterly end of lower Red

> Lake; thence due south to the last-named point; thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the lower Red Lake; thence south to a point from which a line extending west passes midway between what is called the "big marsh" and the sugar bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation, as the same has heretofore existed; thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNally & Co., of Chicago, Ill.

Sections 16 and 36, here in controversy, contain, approximately, 197,120 acres, of which, approximately, 37,120 acres are in the tract specially reserved for allotments.

The State claims these specific sections as part of its school-land grant, and urges that they have not been so "sold or otherwise disposed of" or so "reserved for public uses before the survey" as to exclude them from that grant and to authorize the State to select other lands as indemnity therefor.

THE REAL QUESTION IS, CAN NOT THE LEGISLATION GRANTING PUBLIC LANDS TO THE STATE OF MINNESOTA IN AID OF PUBLIC EDUCATION THROUGH THE COMMON

SCHOOLS, AND THE LEGISLATION DEDICATING LANDS TO THE CIVILIZATION, EDUCATION, AND SUPPORT OF THE CHIPPEWA INDIANS, BE GIVEN FULL OPERATION AND EFFECT WITHOUT DIMINUTION OR IMPAIRMENT OF THE MEANS PROVIDED FOR THE ACCOMPLISHMENT OF EITHER OF THESE OBJECTS OF PUBLIC CONCERN?

As respects the State of Minnesota, the question is merely one as to the location of the lands which it shall receive. The quantity of its school-land grant is not involved. But as respects the Chippewa Indians, the question is vital and affects the integrity and value of the trust created in their favor by the act of January 14, 1889, to the full extent of the lands in controversy. If the State's present contention is not sustained, it will nevertheless receive, under existing law, an equal area of other lands as indemnity; but there is no law under which an equivalent or indemnity can be obtained by the Indians.

The legislation upon which the controversy arises is as follows:

March 3, 1849, section 18 of the act (9 Stat., 403), organizing the Territory of Minnesota, made the following provision respecting school lands:

> That *when the lands in said Territory shall be surveyed under the direction of the Government of the United States preparatory to bringing the same into market*, the sections numbered sixteen and thirty-six of each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory and in the States and Territories hereafter to be erected out of the same.

February 26, 1857 (11 Stat., 166), section 5 of the act, authorizing the formation of a State government for Minnesota, submitted the following proposition to the people of the proposed State:

> That the following propositions be, and the same are hereby, offered to said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit:
>
> First. That sections numbered sixteen and thirty-six in every township of *public lands* in said State, and where either of said sections or any part thereof has been sold or otherwise been disposed of other lands, equivalent thereto and as contiguous as may be, *shall be* granted to said State for the use of schools.

March 3, 1857 (11 Stat., 254), before the acceptance of the foregoing proposition, Congress adopted a joint resolution providing—

> That where any settlements, by the erection of a dwelling house or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas, and Nebraska, and in the States and Territories hereafter to be erected out of the same) *before the said sections shall have been or shall be surveyed*, or when such sections have been or may be selected or occupied as town sites, under

and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, *or reserved for public uses before the survey*, then other lands shall be selected by the proper authorities in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for." And if such settler can bring himself or herself within the provisions of the act of fourth of September, eighteen hundred and forty-one, or the occupants of the town site be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes.

October 13, 1857 (General Statutes of Minnesota, 1894, lxxiv), the people of Minnesota adopted a State constitution, by section 3 of article 2 of which they accepted the proposal of Congress, in the following words:

> The propositions contained in the act of Congress entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission into the Union on equal footing with the original States," are hereby accepted,

ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents.

May 11, 1858 (11 Stat., 285), Minnesota was admitted into the Union by an act which provided:

Whereas an act of Congress was passed February twenty-sixth, eighteen hundred and fifty-seven, entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States:" and whereas the people of said Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and State government which is republican in form and was ratified and adopted by the people at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Minnesota, shall be one, and is hereby declared to be one,

> of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

At that time and always theretofore the land in controversy, and other lands within the State, were unceded Indian lands, and it is stipulated between the parties hereto (Agreed Statement of Facts, p. 2):

> Third. That except as its status may have been affected or changed by the treaty of October 2, 1863 (13 Stat., 667), by the President's order of March 18, 1879, enlarging what was then known as the White Earth Indian Reservation, by the act of Congress of January 14, 1889 (25 Stat., 642), or by the act of Congress of June 2, 1890 (26 Stat., 126), or by one or more of these, the district or country embracing the lands in controversy continued to be unceded Indian lands subject to the original right of occupancy of the Chippewa Indians up to the time of the action had on March 4, 1890, under the said act of January 14, 1889.

The President's order of March 18, 1879, above referred to, is as follows (Executive Orders Relating to Indian Reserves, 39):

> It is hereby ordered that the following described lands, situated in the State of Minnesota, viz: Beginning at the northwest corner of the White Earth Indian Reservation, being the northwest corner of township 146 north, range 42 west, and running thence north to the northwest corner of township 148 north, range 42 west; thence west to the southwest corner of township

149 north, range 42 west; thence north to the northwest corner of township 149 north, range 42 west; thence east on the line between township 149 north and township 150 north to the intersection of said line with the southwestern boundary of the Red Lake Indian Reservation; thence southeasterly to the most southerly point of the *Red Lake Indian Reservation;* thence in a northeasterly direction and along the line of the *Red Lake Indian Reservation* to a point due north from the northeast corner of the White Earth Indian Reservation; thence south to the northeast corner of White Earth Indian Reservation, and thence west along the northern boundary line of White Earth Indian Reservation to the point of beginning, be, and the same is hereby, withdrawn from sale and settlement and set apart as a reservation for Indian purposes: *Provided, however*, That any tract or tracts of land included within the foregoing described boundaries, the title to which has passed out of the United States Government, or to which valid homestead or preemption rights have attached under the laws of the United States, are hereby excluded from the reservation hereby made.

By various treaties prior to October 2, 1863, the boundaries of the territory claimed by the various Indian tribes in Minnesota had become defined. That in controversy was within the boundaries claimed and occupied by the Red Lake and Pembina bands of Chippewa Indians. By the treaty of October 2, 1863 (13 Stat., 667), these bands ceded all lands within certain defined boundaries to the United States, and Article

VI of the treaty speaks of the remaining tract as "the reservation," and is as follows:

> The President shall appoint a board of visitors, to consist of not less than two nor more than three persons, to be selected from such Christian denominations as he may designate, whose duty it shall be to attend at all annuity payments of the said Chippewa Indians, to inspect their fields and other improvements, and to report annually thereon on or before the first day of November, and also as to the qualifications and moral deportment of *all persons residing upon the reservation under the authority of law;* and they shall receive for their services five dollars a day for the time actually employed, and ten cents per mile for traveling expenses: *Provided*, That no one shall be paid in any one year for more than twenty days' service or for more than three hundred miles' travel.

This remaining tract was thereafter known as the "Red Lake Indian Reservation." The act of June 2, 1890 (26 Stat., 126), by section 1, granted to the Duluth and Winnipeg Railroad Company a right of way for the extension of its railroad through the "Red Lake [and other] Indian Reservations," the grant being accompanied by restrictions which give full recognition to the existence of the reservation and the rights of the Indians therein.

January 14, 1889 (25 Stat., 642), by an act for the relief and civilization of the Chippewa Indians in the State of Minnesota, Congress provided for a commission to negotiate with said Indians for the complete

cession and relinquishment, "*for the purposes and upon the terms*" stated in that act, and subject to the approval of the President,

> of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, *except the White Earth and Red Lake reservations, and to all and so much of these two reservations* as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts.

That act directed that all the Chippewa Indians in Minnesota, "except those on the Red Lake Reservation," were to be removed to and allotted lands in the White Earth Reservation, and those on the Red Lake Reservation were to be allotted lands on so much of that reservation as should be reserved by the commissioners for that purpose. The excess of lands over those required to fill such allotments was to be surveyed, inspected, classified as agricultural or pine lands, the latter appraised by 40-acre tracts and sold at vendue, the agricultural lands disposed of to actual settlers at $1.25 per acre, and the proceeds arising from the disposition of the two classes of lands to be held and applied as directed in section 7, which reads:

> That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of

all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period, and with like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians: *and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit;* and at the expiration of the said fifty years the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash in equal shares: *Provided*, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such

> interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund, the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live stock, teams, farming implements, and seed for such of the Indians, to the extent of their shares, as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess for all the advances of interest made as herein contemplated and other expenses hereunder.

The act makes no specific mention of sections 16 and 36, but the entire Red Lake Reservation is throughout the act treated as an entirety and dedicated to the trust therein created.

The lands in said reservation were wholly unsurveyed at the time of the passage of the act of January 14, 1889, and until after the negotiation of the agreement of March 4, 1900, thereunder. (Agreed Statement of Facts, p. 2.)

March 4, 1890, the President approved an agreement negotiated with said Indians by said commissioners under said act, whereby the Indians ceded and relinquished unto the United States, "*for the purposes and upon the terms stated in said act*," a large part of the Red Lake Reservation, and whereby said commissioners reserved the remaining portion of said reservation "for the purpose of making and filling the allotments" to the Indians on the Red Lake Reservation. (A copy of this written agreement appears in the State's brief, at page 136.)

February 28, 1891 (26 Stat., 796), in perpetuation of the policy early established (sec. 18, act of March 3, 1849, 9 Stat., 403; joint resolution, March 3, 1857, 11 Stat., 254; act of February 26, 1859, 11 Stat., 385; sec. 2275, R. S.) of making the status of sections 16 and 36 at the time of survey and identification the criterion by which to determine whether the State should receive them under the school-land grant or receive other lands of equivalent area as indemnity, Congress declared:

> "Where settlements with a view to preemption or homestead have been or shall hereafter be made, *before the survey* of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be

selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers. *And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, to compensate deficiencies for school purposes where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever." And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however*, That

> nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein: but nothing in this proviso shall be construed as conferring any right not now existing.

After the negotiation of said agreement of March 4, 1890, the State of Minnesota presented to the Secretary of the Interior its claim to sections 16 and 36, and the claim being opposed by the Indians, Congress, at the suggestion of the State, directed, by act of January 26, 1896 (29 Stat., 17)—

> That sections numbered sixteen and thirty-six in each township so surveyed shall not be sold until the claim of the State of Minnesota to the ownership of said sections as part of the school lands of said State shall have been determined.

Mr. Towne, of Minnesota, in stating the matter to the House of Representatives, said (Congressional Record, Fifty-fourth Congress, first session, vol. 28, part 1, p. 997): "Accordingly, the bill as now drawn adds a proviso that before the sale shall take place of any of the lands in the school sections the rights of the State of Minnesota, if any, to those lands shall be determined."

The State's claim to the specific sections was subsequently considered and denied by the Secretary of the Interior in a decision (28 Land Decisions, 374) which appears in an appendix to this brief, to which the attention of the court is invited.

Upon these facts the State claims the relief demanded upon two grounds:

1. That the Red Lake Reservation was never, in legal contemplation, a reservation, but unceded Indian lands, and sections 16 and 36, upon the State's admission into the Union, became the property of the State, subject only to the Indian right of occupancy.

2. If that tract of country was an Indian reservation, said sections still became the property of the State, subject only to the incumbrance of the reservation, and that Congress could not make any other disposition of them inconsistent with the State's ownership and should not be held to have intended to do so.

Defendants' contentions are:

1. That this tract of country was a reservation, set apart and appropriated to the uses of the civilization and support of the Indians.

2. That these lands never became "public lands," and so never became subject to the State's school-land grant.

3. That the school-land grant attached to no particular lands until surveyed. Until then the specific sections remained subject to disposition by Congress, the State, in the event of such disposition, being remitted to the selection of other lands as indemnity. Especially did the joint resolution of March 3, 1857, subject these sections in Minnesota to reservation for public uses at any time before survey, and, in the event of any such reservation, make the State's grant, to that extent, one of indemnity lands.

4. That the act of January 14, 1889, and the agreement negotiated thereunder with the Indians, dedicated and appropriated all the lands in the Red Lake Reservation exclusively to the civilization, education, and support of the Indians. This was a disposal of the lands within the meaning of the enabling act of February 26, 1857, and in any event was a reservation of them for public uses under the joint resolution of March 3, 1857.

5. That in interpreting the act of 1889 it is of no moment that the State has a system of common schools aided by a grant of lands from the General Government. That act in terms keeps the education of these Indians under national control, and dedicates a portion of the proceeds of the sale of these lands "exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit."

6. That in determining whether the act of 1889 and the agreement negotiated thereunder were intended to appropriate sections 16 and 36, along with the other lands, to the civilization, education, and support of the Indians, inquiry must be made as to how the act and agreement were understood by the Indians.

POINTS AND ARGUMENT.

I.

The tract of country embracing the sections in controversy was a reservation set apart and appropriated to the uses of the civilization and support of the Indians.

No statute defines in what manner, or that by any particular form of proceeding, land shall be dedicated

to the uses of an Indian reservation. The creation of a reservation must therefore be a question of fact rather than of form.

This case as to the erection and delimitation of the reservation is strikingly analogous to that of *Spaulding* v. *Chandler* (160 U. S., 394). At pages 403–404 the court said:

> It is not necessary to determine how the reservation of the particular tract, subsequently known as the "Indian Reserve," came to be made. It is clearly inferable from the evidence contained in the record that at the time of the making of the treaty of June 16, 1820, the Chippewa tribe of Indians were in the actual occupation and use of this Indian reserve as an encampment for the pursuit of fishing. * * * But whether the Indians simply continued to encamp where they had been accustomed to prior to making the treaty of 1820, whether a selection of the tract, afterwards known as the Indian Reserve, was made by the Indians subsequent to the making of the treaty and acquiesced in by the United States Government, or whether the selection was made by the Government and acquiesced in by the Indians, is immaterial. * * * If the reservation was free from objection by the Government, it was as effectual as though the particular tract to be used was specifically designated by boundaries in the treaty itself. The reservation thus created stood precisely in the same category as other Indian reservations, whether established for general or limited uses, and whether made by the

> direct authority of Congress in the ratification of a treaty or indirectly through the medium of a duly authorized executive officer.

In a similar case, *Wilcox* v. *Jackson* (13 Pet., 498), a question arose whether there had been a reservation of certain lands. The court treated it as a question of fact, not of form, and said (p. 512):

> That the land in question has been appropriated in point of fact there can be no doubt, for the case agreed states that it has been used from the year 1804 until and after the institution of this suit, as well for the purpose of a military post as for that of an Indian agency, with some occasional interruption. Now, this is appropriation, for that is nothing more nor less than setting apart the thing for some particular use.

There being power to make an appropriation, a use for that purpose is an appropriation in fact. There being power, conjoined with a use for which such power may be exercised, presumption of the appropriation must arise, as in case of grants. In *United States* v. *Chaves* (159 U. S., 452, 464) the court held—

> that a grant will be presumed upon proof of an adverse, exclusive, and uninterrupted possession for twenty years, and such rule will be applied as a *presumptio juris et de jure* wherever, by possibility, a right may be acquired in any manner known to the law.

The power to create this Indian reservation is not questionable. That the power was here exercised is clear. By various treaties between the United States

and these Indians portions of their possessions had, from time to time, been ceded to the United States until the remaining country claimed and occupied by them had acquired fixed boundaries, and had been reduced to an area not exceeding that of many other reservations occupied by like Indian tribes. The treaty of October 2, 1863, by which the last of these cessions was made, in its sixth article denominated the lands retained by the Indians as "the reservation." A reading of the treaty, which is brief (13 Stat., 667), makes it manifest that the reservation referred to is the country retained and to be occupied by the Red Lake and Pembina bands of Chippewa Indians, one party to the treaty, and makes it equally manifest that the words "the reservation" did not have reference to the two separate 640-acre tracts of Moose Dung and Red Bear in the ceded country. But for the suggestion to the contrary, on page 14 of the State's brief, this matter would hardly justify discussion. It is altogether unreasonable to believe that these two individual allotments of Moose Dung and Red Bear were deemed of sufficient importance to require the annual visitation of three missionaries, to be appointed by the President, charged with the duty of annually inspecting the reservation and reporting upon the fields and improvements of the Indians and "the qualifications and moral deportment of all persons residing upon the reservation under the authority of law." The persons about whom the Indians and the Government were thus concerned were the Indian agent, agency employes, Indian trader, and

persons of like station, who would be authorized to take up a residence upon the reserved land. It was of consequence that those persons who would exert some control and much influence over the Indians should possess proper qualifications and deport themselves according to right moral standards. Strong evidence that the retained lands constitute "the reservation" is found in the fact that the missionary or visiting board in the discharge of its duties under Article VI actually visited the Red Lake reservation and inspected and reported upon the conditions there existing, and that Congress annually appropriated the requisite money to compensate the board for so doing. (See reports of the visiting board for the years 1872 and 1873, which appear in the latter part of the appendix to this brief, and see items in appropriation acts appearing in 13 Stat., 178 and 556; 14 Stat., 272 and 497; 15 Stat., 204; 16 Stat., 20, 340, and 550; 17 Stat., 170 and 444.)

This treaty was a contract, and the manner in which it was subsequently executed and given effect by the parties is entitled to great influence in its interpretation, and in this instance makes the intention entirely clear. (1) Shortly after the treaty the Government established and thereafter maintained an Indian agency upon these retained lands, as is shown in the reports of the missionary or visiting board which appear in the appendix hereto. (2) The President's order of March 18, 1879, *supra*, defining the boundaries of the White Earth Reservation, gave Executive recognition to the Red Lake Reservation. (3) The act of

Congress of January 14, 1889, gave repeated legislative recognition to the reservation, and was for the avowed purpose of applying it in another manner to the civilization, support, and education of the Indians. (4) The commissioners appointed under that act, and the Indians themselves, gave direct recognition to the reservation in the agreement negotiated under said act. (A copy of the agreement appears in the State's brief, at page 136.) (5) The act of June 2, 1890, *supra*, also recognized the reservation and made the right of way thereby provided for dependent upon the consent of the Indians.

In the presence of such repeated recognition of the reservation by the executive and legislative branches of the Government and by the Indians, its existence can not be questioned by others.

That the act of January 14, 1889, and the agreement negotiated thereunder absolutely dedicated these lands to the civilization, education, and support of the Indians, and thereby, so far as it affects the present controversy, expressly continued the reservation instead of extinguishing it, will be shown later on.

II.

The lands in controversy never became public lands, and so never became subject to the State's school-land grant.

It can not be claimed, and apparently is not, that the act of 1849 was a grant. It was nothing more than a reservation for the time being of the land therein designated, which could be withdrawn or modified at will by the authority which made it.

The school grant made under the act of 1857 was of "sections numbered 16 and 36 in every township of *public lands* in said State." It was held in *Newhall* v. *Sanger* (92 U. S., 761, 763) that—

> The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws. That they were so employed in this instance is evident from the fact that to them alone could the order withdrawing lands from preemption, private entry, and sale apply.

In *Leavenworth, etc., Railroad* v. *United States* (92 U. S., 733, 741) the court, speaking of a grant to the State of Kansas in aid of the construction of a railway, as affecting lands within an Indian reservation, said:

> But did Congress intend that it should reach these lands? Its general terms neither include nor exclude them. Every alternate section designated by odd numbers, within certain defined limits, is granted; but only the public lands owned absolutely by the United States are subject to survey and division into sections, and to them alone this grant is applicable. It embraces such as could be sold and enjoyed, and not those which the Indians, pursuant to treaty stipulations, were left free to occupy. (*Rice* v. *Railroad Co., supra.*) Since the land system was inaugurated it has been the settled policy of the Government to sell the public lands at a small cost to individuals, and for the last twenty-five years to grant them to States in large tracts to aid in works of internal improvement. But these grants have always been recognized as

> attaching only to so much of the public domain as was subject to sale or other disposal, although the roads of many subsidized companies pass through Indian reservations.

In *Missouri, Kansas and Texas Railway Co.* v. *Roberts* (152 U. S., 114), speaking of the reservation of sections 16 and 36 to Kansas as school lands, the court said (at page 119):

> If the reservation named was intended as a grant of the sections sixteen (16) and thirty-six (36) to the Territory and to the States to be created out of them, or as a dedication of them for schools, it could only apply to such lands as were public lands, for no other lands in our land system are subdivided into sections, nor could it embrace lands which had been set apart and reserved by statute or treaty with them for the use of the Indians, as was the case with the lands involved in this controversy, as we have already shown.

The same meaning to the words "public lands" is given by the court in the following decisions: *Barker* v. *Harvey* (181 U. S., 481, 490); *Mann* v. *Tacoma Water Co.* (153 U. S., 273, 284); *Doolan* v. *Carr* (125 U. S., 618, 632); *Bardon* v. *Northern Pacific Railway Co.* (145 U. S., 535, 538); *Leavenworth, etc., Railroad Co.* v. *United States* (92 U. S., 733, 745).

The State, at pages 60 to 62 of its brief, seeks to distinguish the case of *Missouri, Kansas and Texas Railway Co.* v. *Roberts, supra*, but it is submitted that the distinction is not well taken.

The words of the grant, limiting it to public lands, referred to lands subject to ordinary appropriation under the general land laws, and this independently of the joint resolution of 1857.

At the time of the act of January 14, 1889, the lands in controversy constituted part of a subsisting Indian reservation. That act and the agreement negotiated thereunder, both being before the survey, withheld the lands from appropriation under the general land laws and dedicated them exclusively to the civilization, education, and support of the Indians. The lands have thus been reserved for public uses since before their survey, and hence never became public lands.

III.

The school-land grant attached to no particular lands until surveyed. Until then the specific sections remained subject to disposition by Congress, the State, in the event of such disposition, being remitted to the selection of other lands as indemnity. Especially did the joint resolution of March 3, 1857, subject these sections in Minnesota to reservation for public uses at any time before survey, and, in the event of any such reservation, make the State's grant to that extent one of indemnity lands.

The general purpose of the school-land grant is to aid the object of public education, but its accomplishment does not depend upon the application of the specific sections 16 and 36. It can be accomplished through the application of other lands of equivalent area where the specific sections are not available. In recognition of this, the words of the grant limit it to public lands not sold or otherwise disposed of, and that the grant

may not be materially impaired by sales or other dispositions in advance of the survey and identification of the specific sections provision is made for indemnity where such sections are sold or otherwise disposed of. Until the survey and identification of the specific sections the right of the State is inchoate merely, and full power of disposition remains in Congress.

This proposition is sustained by a decision of this court, interpreting the school-land grant to Nevada (*Heydenfeldt* v. *Dancy Gold and Silver Mining Co.*, 93 U. S., 634). The act of March 21, 1864 (13 Stat., 32), providing for the admission of that State into the Union, provided:

> That sections sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby, granted to said State for the support of common schools.

Differing from the proposal to Minnesota, the one to Nevada contains the words "and are hereby," which so strongly denote a present grant. Another difference was that no lands in Nevada had been disposed of at the time of the State's admission. The court rested its decision largely upon general principles, which are of controlling influence here in view of the joint resolution of 1857. The court said (p. 639):

> In this instance words of qualification restrict the operation of those of present grant. Literally construed, they refer to past transactions,

but evidently they were not employed in this sense, for no lands in Nevada had been disposed of by any act of Congress. * * * It could not, as we have seen, apply to past sales or dispositions, and to have any effect at all must be held to apply to the future.

This interpretation, though seemingly contrary to the letter of the statute, is really within its reason and spirit. It accords with a wise public policy, gives to Nevada all she could reasonably ask, and acquits Congress of passing a law which in its effects would be unjust to the people of the Territory. Besides, no other construction is consistent with the statute as a whole, and answers the evident intention of its makers to grant to the State *in præsenti* a quantity of lands equal in amount to the sixteenth and thirty-sixth sections in each township. Until the status of the lands was fixed by a survey and they are capable of identification, Congress reserved absolute power over them, and if, in exercising it, the whole or any part of the sixteenth and thirty-sixth sections had been disposed of, the State was to be compensated by other lands equal in quantity and as near as may be in quality. By this means the State was fully indemnified, the settlers ran no risk of losing the labor of years, and Congress was left free to legislate touching the national domain in any way it saw fit to promote the public interests.

The later case of *Beecher* v. *Wetherby* (95 U. S., 517) is relied upon by the State. But the decision in that case does not even mention, much less expressly overrule, the Heydenfeldt case, and arose upon essentially

different facts. The land there in question is in Wisconsin, and was identified by survey in May or June, 1854; the treaty which embraced it in an Indian reservation did not take effect until in August, 1854, and the act of Congress under which it was attempted to sell the land for the benefit of the Indians was not enacted until in 1871, all of which appears in the opinion of the court. The land therefore had been identified by survey and the title had fully vested in the State before its attempted reservation by the treaty and before the attempted authorization for its sale. And even if this difference in facts did not exist between that case and the one at bar, the joint resolution of 1857 expressly ingrafting upon the Minnesota school-land grant a provision whereby the United States retained the right and power to reserve for public uses the specified sections at any time before survey and to remit the State to a selection of indemnity land, makes the decision in *Beecher* v. *Wetherby* impossible of application here.

In *State of Colorado* (5 L. D., 412) Secretary of the Interior Lamar said:

> It is evident from the very terms of the grant that Congress intended to grant to Colorado (and the same is true of other States) two sections for every township in the State, to be taken of the sixteenth and thirty-sixth sections where such sections at the time of survey have not been sold or otherwise disposed of, and where at the time of survey such sections have been sold or disposed of, then other lands equivalent thereto and as contiguous as may be are granted

> to said State in lieu of the sixteenth and thirty-sixth sections.

The rule thus announced has been uniformly followed by the Department. (State of Colorado, 12 L. D., 70.)

The joint resolution of March 3, 1857, *supra*, provided, among other things—

> That where * * * the sixteenth or thirty-sixth sections * * * in the *Territories of Minnesota*, Kansas, and Nebraska, *and in the States and Territories hereafter to be erected out of the same*, * * * *have been or may be* * * * *reserved for public uses before the survey*, then other lands shall be selected by the proper authorities in lieu thereof.

This joint resolution was adopted after the passage of the Minnesota enabling act, but before the propositions contained in that act had been accepted by Minnesota and before the admission of that State into the Union. The resolution also made provision whereby preemption and town-site claimants settling upon these sections in advance of the survey could perfect title to the lands settled upon, and gave the State the right to take other lands of equivalent area as indemnity. Whether this resolution was intended to simply give better expression to the intention of Congress, less strongly stated in the act creating the Territory of Minnesota and in the enabling act of February 26, 1857, that the status of sections 16 and 36 at the time of their survey should be the criterion by which to determine whether they would pass to the State under the school-land grant, or whether the resolution was intended to mod-

ify these prior acts by correcting what was deemed a material omission therein, the result was that thereafter the school-land grant to Minnesota contained an unqualified declaration that sections 16 and 36, where settled upon under the preemption or town-site laws or reserved for public uses before the survey, should not pass to the State, but instead should constitute the basis for the selection of indemnity.

The authority of Congress at that time to place this condition or exception in the school-land grant to the State is obvious; and if it were not, the matter was finally settled by the decision of this court in the case of *Minnesota* v. *Bachelder* (1 Wall., 109), which involved the right of the State to lands in a sixteenth section which were claimed under the preemption law in pursuance of settlement made subsequent to the enabling act and prior to the survey. In presenting the case on behalf of the State, the attorney-general contended:

> The joint resolution of Congress is void. It can not divest a title which the United States had previously granted. The organic act of the Territory constituted a *dedication* to public uses, perpetual and irrevocable, and whatever might have been its effect upon the naked fee, at least divested Congress of all power of disposition over the subject-matter so far as such disposition should tend to impair the public rights created by that act.
>
> * * * * *
>
> Neither is the case helped by the memorial from the Territorial legislature. The organic act (par. 18) indicates an intention to consecrate

> these lands for the benefit of the generations who should in future inhabit the State; and while divesting Congress of all power of disposition over them, to withhold it from any other body then in existence. They are reserved "for the purpose of being applied to schools in said Territory, *and in the States and Territories hereafter to be erected out of the same.*" They were not granted to the Territory, and were in no sense its property.

Justice Nelson, in delivering the opinion of the court, disposed of this matter by saying:

> It is not important to inquire as to the power of Congress to pass this law independently of any application from the Territorial legislature, as the assent of the people through their convention, by coming into the Union as a State, upon the terms proposed, must be regarded as binding the State. The right of the State to the school sections within it must, therefore, be subject to the modification contained in the joint resolution, and that modification is, that in case a person shall have made a settlement upon any school section, by the erection of a dwelling house on the same, or the cultivation of any portion of it before the survey, and, further, can bring himself within the provisions of the preemption act of 1841, he shall be entitled to the section thus improved, in preference to any title of the State.

It is true that the Territorial legislature of Minnesota had, in a memorial to Congress, suggested legislation for the protection of preemption and town-site settle-

ments made upon sections 16 and 36 before the survey, and that the suggestion did not extend to the protection of reservations for public uses, but the authority of Congress was not dependent upon such a suggestion, and the fact that the joint resolution goes further than the suggestion of the Territorial legislature is evidence that the provision protecting reservations made before the survey was deliberately inserted in the Congressional joint resolution for the purpose of giving it a broader effect than it otherwise would have had.

This joint resolution has never been expressly repealed and there is no necessary conflict between it and any subsequent statute. On the contrary, it is in harmony with the general provision contained in the act of February 28, 1891 (26 Stat., 796), that—

> And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections.

It is suggested in the opposing brief that the proviso in the provision just quoted recognizes the State's right

to sections 16 and 36, even where they are included within an Indian, military, or other reservation. The suggestion is not well grounded. It was not to instances like the one now under consideration that the proviso was intended to have application. Military, Indian, and other reservations are established as necessity therefor arises, sometimes before and sometimes after the survey of the lands included therein. Depending upon the permanency of the reservation, and perhaps upon the existence of some applicable provision like that in the joint resolution of March 3, 1857, the reservation, if established before the survey, postpones or cuts off altogether the right of the State to sections 16 and 36. If established after the survey the reservation frequently includes within its exterior limits sections 16 and 36, which by reason of their identification upon survey, have passed to the State beyond any power of revocation by Congress. It is to instances like these that the proviso has reference. (State of California, 28 Land Dec., 57.)

It is true, as urged by the State, that this same act of February 28, 1891, contains a still further proviso—

> That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein; *but nothing in this proviso shall be construed as conferring any right not now existing.*

But this is not applicable to reservations which are in their nature permanent and absolute or to reservations the extinguishment of which is coupled with an appropriation and dedication of the lands to other public uses which preclude their restoration to the public domain. The last clause also recognizes that there are instances, like the case at bar, where the State will not be entitled to the specific sections in place even upon the extinguishment of the reservation and the restoration of the lands to the public domain, and therefore declares that "nothing in this proviso shall be construed as conferring any right not now existing."

IV.

The act of January 14, 1889, and the agreement negotiated thereunder with the Indians, dedicated and appropriated all the lands in the Red Lake Reservation exclusively to the civilization, education, and support of the Indians. This was a disposal of the lands within the meaning of the enabling act of February 26, 1857, and in any event was a reservation of them for public uses under the joint resolution of March 3, 1857.

The words of this joint resolution, viz, "have been or may be * * * reserved for public uses," evidently contemplated objects of public concern and included prospective as well as present use and necessity. We have already urged that this, in legal effect, was covered by the terms of the enabling act of February 26, 1857, and the argument will not be now repeated. The public uses for which the lands might be so reserved are not specified in the joint resolution. Congress chose to place no restrictions upon the power

thus reserved, preferring to leave the propriety of each reservation for determination as occasion arose.

The moral obligation of the Government to civilize, educate, care for, and protect the Indians, displaced from their ancient possessions by the irruption of a stronger and more advanced race, has been so often recognized by this court and is so familiar a subject for its consideration as to require here no citation or discussion. That it is a national obligation is firmly established in the legislation of Congress and in the adjudication of the courts. Its fulfillment is a matter of public concern, and moneys or lands dedicated to that object are disposed of and reserved for public uses. The manner in which this moral obligation is to be discharged is solely a matter for the political branch of the Government to determine, and whatever is done in the exercise of political power, acting within its proper sphere, is conclusive upon the courts and beyond their power to review.

At the time of the admission of Minnesota into the Union the lands in controversy were held by dependent domestic Indian tribes. No power existed in the State to remove them from their lands or to terminate their right of occupancy. That could be done only by the General Government in the exercise of its political power, and in the very nature of things the extent to which this should be done, and the terms and conditions thereof, were within the sole cognizance of the political branch of the Government. It was free to exercise this power to such extent, in such mode, and

with such conditions as seemed to it expedient, so long only as the vested rights of others were not interfered with. No vested rights of the State of Minnesota are here interfered with. Until the survey and identification of the specific sections the Government was at liberty to apply them to public uses. This is what is being done; nothing more.

The political branch of the Government defined its policy in this instance by the act of January 14, 1889, and the agreement negotiated thereunder with the approval of the President.

The terms and pledges held out by that act were the basis, consideration, and pledges upon which the Minnesota Chippewas agreed to relinquish their right of occupancy. Under that act and the agreement negotiated thereunder in the nature of a treaty these lands never became public lands of the United States, but were disposed of and appropriated as a trust for the benefit of the Indians. The reservation was, in fact, not extinguished, but the right of occupancy of the lands, not specially reserved for allotment, was converted by the pledges and conditions named in said act and agreement into a right to have the lands disposed of in the manner specially provided and to have the proceeds applied to the civilization, education, and support of the Indians. Neither the act nor the agreement contemplated the restoration of any of the lands to the public domain. An unqualified or absolute cession was not asked by Congress or made by the Indians. The reservation, converted and changed in

form only, still continues. The right to do so, up to the time of survey, Congress, in effect, reserved by its original proposal to Minnesota, and also, in terms, by the joint resolution.

It is only *quo modo*, and for the purposes of the trust, that the right of occupancy has been relinquished. Otherwise than for that purpose and to make the lands by sale more beneficial to themselves, the Indians have never ceded or relinquished them. In the very act of cession, and before their survey, the land was appropriated and disposed of as a trust for the benefit of the Indians, and there remains to the State, under the terms of the proposal and of the joint resolution, only a right to indemnity.

V.

In interpreting the act of 1889 it is of no moment that the State has a system of common schools aided by a grant of lands from the General Government. That act in terms keeps the education of these Indians under national control and dedicates a portion of the proceeds of the sale of these lands "exclusively to the establishment and maintenance of a system of free schools among said Indians in their midst and for their benefit."

It is suggested in the opposing brief (p. 68) that if the State obtains these lands they will benefit the Indians in common with all citizens of Minnesota, Indians being entitled to the privileges of the common schools. This is not a sufficient reason for depriving the Indians of the exclusive benefit of the land set apart by the trust.

The obligation to protect the Indians from local hostility, and to provide for their maintenance, instruction,

and civilization, has always been recognized as a national obligation, which could not with justice to the Indians be intrusted to local governments. In *United States* v. *Kagama* (118 U. S., 375), the court reviews and approves former decisions in *Worcester* v. *Georgia* (*supra*), *Fellows* v. *Blacksmith* (19 How., 366), *Kansas Indians* (*supra*), *New York Indians* (5 Wall., 761), and at page 384 says:

> Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen. * * *
>
> The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection as well as to the safety of those among whom they dwell. It must exist in that Government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it never has been denied, and because it alone can enforce its laws on all the tribes.

The court approves this language in *Choctaw Nation* v. *United States*, *supra*, and in *United States* v. *Choctaw, etc., Nations*, *supra*.

How the care and duty shall be exercised is a political question, and it is not the province of the court to intrude "upon the domain committed by the Constitution to the political departments of the Government," or "in effect determine questions of mere governmental policy." (*United States* v. *Choctaw, etc., Nations, supra.*)

That the State had provided a system of common schools of which the Indians could have the benefit does not determine this controversy. Section 7 of the act of 1899 declares in respect of the trust fund that—

> one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians in their midst and for their benefit.

Congress evidently was not willing, even if the Indians became citizens, to leave the matter of their education to the State authorities, but the better to assure their object, reserved the subject under national control and supervision. Its action in that regard is conclusive.

VI.

In determining whether the act of 1889 and the agreement negotiated thereunder were intended to appropriate sections 16 and 36, along with the other lands, to the civilization, education, and support of the Indians, inquiry must be made as to how the act and agreement were understood by the Indians.

This act and agreement constitute a contract with the Indians, and the rule for its interpretation is now well settled.

It was held in *Worcester* v. *The State of Georgia* (6 Pet., 515, 582):

> The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred rather than a right acknowledged would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

This has ever since been recognized as a proper guide in the interpretation of treaty and contract instruments between the Government and its dependent, unlettered, aboriginal people. It was approved in the *Kansas Indians* (5 Wall., 737, 760), and in *Choctaw Nation* v. *United States* (119 U. S., 1, 27). In that case, page 28, the court further said:

> The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason

> demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons equally subject to the same laws.

The language of the court in the foregoing decisions is approved in *Jones* v. *Mehan*, (175 U. S., 1, 11) and *United States* v. *Choctaw, etc., Nations* (179 U. S., 494, 532). In the latter case the court, however, observes that:

> In no case has it been adjudged that the courts could by mere interpretation, or in deference to its view as to what was right under all the circumstances, incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded because, in the opinion of the court, that meaning may in a particular transaction work what it would regard as injustice to the Indians. That would be an intrusion upon the domain committed by the Constitution to the political departments of the Government * * * (p. 538). While the dependent character of the Indians makes it the duty of the court to closely scrutinize the provisions of the treaty and to interpret them "in the light of the larger reason and the superior justice that constitute the spirit

> of the law of nations," *Choctaw Nation* v. *United States* (119 U. S., 1, 28), the court must take care, when using its power, to ascertain the intention of the parties, not to disregard the obvious import of the words employed, and thereby, in effect, determine questions of mere governmental policy.

The rule so announced applies with great force to the present case. If "the obvious palpable meaning of the words of an Indian treaty" may not be disregarded in the interest of the Indian, obviously they can not be disregarded to his prejudice.

Sections 16 and 36 were as much a part of the Red Lake Indian Reservation as were any of the other sections therein. The Indians could not have understood otherwise. The act of 1889 and the agreement negotiated thereunder deal with the reservation as an entirety. Whatever was to be ceded by the Indians was to be applied to their civilization, education, and support through the medium of the sales and the system of accounting therein provided. The provision respecting the application of the lands to these public uses is as broad as the provision respecting the cession. Nothing was said of the sixteenth or thirty-sixth sections, and it is clear that it was not contemplated that these sections should be left out of either the cession or the trust created for the Indians. The lands ceded were to be sold for their benefit. None were to be ceded except as a means to their ultimate sale "*for the purposes and upon the terms*" stated in the act.

This is not an instance where these sections had

become vested in the State to that extent that they were beyond the control of Congress, so that of necessity the legislation must be held to apply only to those lands outside of these sections. Not being surveyed and the right of the State not having attached, and power being expressly reserved to devote them to public uses at any time before the survey, there is no obstacle in the way of giving the language employed by Congress and the Indians in the act of 1889 and the agreement negotiated thereunder the natural import of the words employed. These include sections 16 and 36 with all others.

At page 56 of the State's brief a claim is apparently attempted to be founded upon the provisions of the Indian appropriation act of March 3, 1891 (26 Stat., 989–1044). By sections 8 to 31 eight articles of agreement with Indian tribes for cessions of lands were set out. None of these has any reference to the Chippewa Indians, to the State of Minnesota, or to the lands in controversy. Section 38 of the act (p. 1044) then provides:

> No provision for settlement on or sale of the lands in the various agreements hereinbefore mentioned shall apply to sections sixteen and thirty-six, which land in the States is hereby granted to the State in which they are situated for the support of the common schools of such State under the limitations prescribed by law, and such sections in the Territories of the United States are reserved from occupancy, entry, or sale, under any land law of the United States; but this provision shall not apply to mineral

land which may be disposed of under the laws applicable thereto.

The section has not the remotest bearing upon the matter in controversy. To give it any effect here would be a violation of the subsisting agreement with the Chippewa Indians, a thing not to be presumed or to be done upon mere inference. It is also directly in conflict with the general legislation protecting preemption and homestead settlements upon sections 16 and 36, where made prior to survey. It should, therefore, be applied only to the lands described in the agreements specifically mentioned. There was probably some reason why, as to these lands, Congress was willing to depart from the different policy which had so long prevailed, but there has been no attempt to make this innovation of general application.

IN CONCLUSION.

A construction should be given to the legislation here under consideration which will permit of a full attainment of two objects declared by Congress to be of public concern, viz, the aid of public education through the common schools of the State of Minnesota, and the civilization, education, and support of the Chippewa Indians, who are wards of the nation. The contention of the State can be sustained only by the impairment of the means provided by Congress for the attainment of the second object. In anticipation of such a situation Congress has providently arranged for the full attainment of both objects by giving to the State a right of selecting indemnity lands equivalent in area to such sections 16 and 36. This right to indemnity has become a

full equivalent since the act of February 28, 1891 (26 Stat., 796), declaring that such indemnity—

> *shall be selected from any unappropriated surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur.*

Since the sustaining of the contention of the Chippewa Indians will not impair the means of aiding public education through the common schools of Minnesota, it presents the better course and the one which has controlled the action of Congress with respect to these lands, as is evidenced by the provision for indemnity in the case of the State and the absence of any provision for indemnity in the case of the Indians.

It is respectfully submitted that the bill should be dismissed.

WILLIS VAN DEVANTER,
Assistant Attorney-General.

APPENDIX.

DECISION OF THE SECRETARY OF THE INTERIOR DENYING THE CLAIM OF MINNESOTA TO THE LANDS IN CONTROVERSY, DATED MAY 9, 1899, PUBLISHED IN 28 LAND DECISIONS, 374.

The State of Minnesota, under the grant of lands made to that State for school purposes, claims sections 16 and 36 of each township embraced within the boundaries of the former Red Lake Indian Reservation.

The Territory of Minnesota was established by the act of March 3, 1849 (9 Stat., 403), section 18 of which made the following reservation of lands for school purposes:

> That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

The act of February 26, 1857 (11 Stat., 166), authorized the people of the Territory to form a constitution and State government preparatory to their admission into the Union, and in its fifth section submitted the following proposition to the people of the proposed State for their acceptance or rejection, to wit:

> SEC. 5. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the said convention of the

people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit:

First. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools.

March 3, 1857 (11 Stat., 354), before the admission of the State and before the acceptance of said proposition, Congress adopted a joint resolution relating to the school lands in the proposed State, which provides:

That where any settlements, by the erection of a dwelling house or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas, and Nebraska, and in the States and Territories hereafter to be created out of the same) before the said sections shall have been or shall be surveyed; or where such sections have been or may be selected or occupied as townsites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, or reserved for public uses before the survey, then other lands shall be selected by the proper authorities in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth of May, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for." And if such settler can bring himself, or herself, within the provisions of the act

> of fourth of September, eighteen hundred and forty-one, or the occupants of the townsite be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them, respectively, as if such sections had not been previously reserved for school purposes.

A constitution was adopted by the people of Minnesota October 13, 1857, under which the State was admitted into the Union by the act of May 11, 1858 (11 Stat., 285). Section 3 of article 2 of the State constitution accepted this proposition, with others, the acceptance being couched in the following terms:

> The propositions contained in the act of Congress entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and the State government, preparatory to their admission into the Union on an equal footing with the original States," are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States.

The act of February 26, 1859 (11 Stat., 385), afterwards incorporated into section 2275 of the Revised Statutes, contained a general provision for the protection of persons making settlement upon sections 16 or 36 before survey, which was reenacted by the act of February 28, 1891 (26 Stat., 79), which latter act also contains the following general provision:

> And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or

other reservation, or are otherwise disposed of by the United States.

At the time of the admission of the State of Minnesota into the Union the region of country embracing the lands here in controversy was occupied by the Chippewa Indians. By various treaties between the United States and these Indians the boundaries of the country claimed by the several bands had become definitely fixed and the lands here in question were within the territory claimed and occupied by the Red Lake and Pembina bands. By the treaty of October 2, 1863 (13 Stat., 667), these bands ceded to the United States all their rights in and to a certain defined portion of the lands claimed and occupied by them in the State of Minnesota, leaving unceded a portion thereof, which is spoken of in the sixth article of the treaty as "the reservation," and which came to be known as the Red Lake Reservation. The Indians thereafter occupied this unceded tract under the charge of an agent, and it was called the "Red Lake Indian Reservation" in the President's order of March 18, 1879, enlarging the White Earth Reservation. In the act of January 14, 1889 (25 Stat., 642), it is recognized by Congress as an existing Indian reservation, and this recognition is repeated in the act of June 2, 1890 (26 Stat., 126).

The act of 1889 provided for a commission to negotiate with the Chippewa Indians for the complete cession and relinquishment "for the purposes and upon the terms" stated in said act—

> of all their title and interest in and to all of the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake reservations, and to all and so much of these two reservations as in the judgment of said

> commission is not required to make and fill the allotments required by this and existing acts.

The act directed that any lands so ceded should be surveyed, examined, and classified as "pine lands" and "agricultural lands;" that the pine lands should be sold at public auction to the highest bidder, and that the agricultural lands should be sold to actural settlers under the homestead law at $1.25 per acre; that the money accruing from the disposal of these lands, after deducting expenses, should be placed in the Treasury of the United States to the credit of the Indians, and draw interest at 5 per centum per annum, and that the interest should be paid to and expended for the benefit of the Indians, and at the end of fifty years the principal should be paid to the Indians then living, in cash, in equal shares.

Under this act an agreement was effected with said Indians, which was approved by the President March 4, 1890, which ceded and relinquished to the United States "for the purposes and upon the terms stated in said act" a part of the lands occupied by the Red Lake and Pembina bands, and known as the Red Lake Reservation. Sections 16 and 36 in the ceded portion of this reservation are the lands here in controversy. Before any of the lands so ceded and relinquished were sold under the direction given in the act of 1889, the State of Minnesota presented her claim to every sixteenth and thirty-sixth section as inuring to her under the grant for school purposes. The act of February 26, 1896 (29 Stat., 17), after making some slight changes in the provisions of the act of 1889 respecting the survey, examination, and sale of the ceded lands, contains this provision:

> That sections numbered sixteen and thirty-six in each township so surveyed shall not be

sold until the claim of the State of Minnesota to the ownership of said sections as part of the school lands of said State shall have been determined.

The State's claim to the specific sections 16 and 36 in the ceded Red Lake Reservation lands is predicated upon the following propositions: First, that by reason of the proposition made to the people of Minnesota by the act of February 26, 1857, and the acceptance thereof in the State constitution, a compact was entered into whereby the lands which might by appropriate surveys be identified as embraced within those sections were irrevocably appropriated to the State, so that no law enacted subsequently to the compact could authorize a sale or other disposition of them by the United States. Second, That if the joint resolution of March 3, 1857, be regarded as modifying the proposition made by the United States in the act of February 26, 1857, before its acceptance by the State, these lands were never "reserved for public uses" within the meaning of the joint resolution, (*a*) because they never constituted an Indian reservation and (*b*) because lands reserved for Indians are not reserved for "public uses."

The propositions of the State can not be sustained.

It is not necessary to consider what the result would have been in the absence of the joint resolution of March 3, 1857, because both upon principle and authority the provisions of that resolution constitute an insurmountable obstacle to the State's claim to these specific sections. The act of March 3, 1849, was nothing more than an act of Congress reserving for future disposition the sections named. It did not attain and was not intended to attain the dignity of a compact irrevocable by Congress. Nor did the provision in the act of February 26, 1857, in itself constitute a grant of these lands to the proposed State. While it was intended to form

the basis of a compact irrevocable by Congress, it remained until accepted simply a statutory proposal, subject to modification or revocation by the authority which made it. The lands in the proposed State were at that time unsurveyed, and the specific sections proposed to be granted were not susceptible of identification. To remove any possible uncertainty as to whether when these sections should become identified by survey the right of the State would relate back to the date of the compact, so as to defeat any intervening sale or other disposition of the lands by the United States, or whether the right of the State would attach only to the specific sections which remained unsold and undisposed of at the time of their identification by survey, and to protect preemption and town-site claims to said sections initiated before the survey thereof, and also to protect reservations thereof for public uses, made while the lands remained unsurveyed, the joint resolution of March 3, 1857, was adopted by Congress and approved by the President. This joint resolution, which was called forth by a memorial from the legislature of the Territory of Minnesota, operated as an interpretation, or, if need be, as a modification of the proposal made in the act of February 26, 1857, and being passed before the acceptance of that proposal it follows that the subsequent acceptance in the State constitution was of the proposal as so interpreted and modified. The case of *Minnesota* v. *Bachelder* (1 Wall., 109) involved the right of the State to lands in a section 16, which were claimed under the preemption law in pursuance of settlements made subsequent to the act of February 26, 1857, and prior to the survey. In presenting the case on behalf of the State the attorney-general contended:

> The joint resolution of Congress is void. It can not divest a title which the United States

had previously granted. The organic act of the Territory constituted a *dedication* to public uses, perpetual and irrevocable, and, whatever might have been its effect upon the naked fee, at least divested Congress of all power of disposition over the subject-matter, so far as such disposition should tend to impair the public rights created by that act.

* * * * *

Neither is the case helped by the memorial from the Territorial legislature. The organic act (par. 18) indicates an intention to consecrate these lands for the benefit of the generations who should in future inhabit the State; and while divesting Congress of all power of disposition over them, to withhold it from any other body then in existence. They are reserved "for the purpose of being applied to schools in said Territory, *and in the States and Territories hereafter to be erected out of the same.*" They were not granted to the Territory, and were in no sense its property.

Justice Nelson, in delivering the opinion of the court, disposed of this matter by saying:

It is not important to inquire as to the power of Congress to pass this law independently of any application from the Territorial legislature, as the assent of the people through their convention, by coming into the Union as a State, upon the terms proposed, must be regarded as binding the State. The right of the State to the school sections within it must, therefore, be subject to the modification contained in the joint resolution, and that modification is, that in case a person shall have made a settlement upon any school section, by the erection of a dwelling house on the same, or the cultivation of any portion of it before the survey, and, further, can bring himself within the provisions of the pre-

> emption act of 1841, he shall be entitled to the section thus improved, in preference to any title of the State.

The effect of the joint resolution was to make the status of sections 16 and 36 at the time of survey the criterion in determining whether the State is entitled to the specific sections or to other equivalent lands as indemnity. If at that time these sections were settled upon and improved with a view to preemption, or were selected or occupied as town sites, or were reserved for public uses, the proper authorities of the State were authorized to select other equivalent lands in lieu thereof. Where these sections were thus claimed or reserved before survey they were considered as having been sold or otherwise disposed of within the meaning of the act of February 26, 1857, and as therefore excepted from the grant to the State If not so excepted, there would have been no occasion for permitting the selection of equivalent lands, because it could not have been intended that the State should receive the specific sections and also the indemnity. The case of *Beecher* v. *Wetherby* (95 U. S., 517), relied upon by the State, is without application to the case at bar for the reasons, first, that the compact between the United States and the State of Wisconsin there under consideration was not affected by any interpreting or modifying joint resolution such as is here presented, and, second, that, as shown by the opinion in that case, the section 16 there in controversy was identified by survey in May or June, 1854, so that the title thereupon passed to the State beyond the power of revocation by Congress, while the treaty establishing the reservation, which was claimed to except the land from the grant to the State, did not take effect until in August following. It will not, therefore, be necessary to notice the claimed

conflict between the decision in *Beecher* v. *Wetherby* and that in the earlier case of *Heydenfeldt* v. *Daney Gold and Silver Mining Co.* (93 U. S., 634); but in view of the provisions of the joint resolution of March 3, 1857, what was said by the court in the Heydenfeldt case is especially applicable here. The court there announced the conclusion that under the grant of school lands to the State of Nevada the right of the State to any specific tract must be determined by its status at the time of survey, and in support of that conclusion said (p. 639):

> This interpretation, although seemingly contrary to the letter of the statute, is really within its reason and spirit. It accords with a wise public policy, gives to Nevada all she could reasonably ask, and acquits Congress of passing a law which in its effects would be unjust to the people of the Territory. Besides, no other construction is consistent with the statute as a whole, and answers the evident intention of its makers to grant to the State *in præsenti* a quantity of lands equal in amount to the sixteenth and thirty-sixth sections in each township. Until the status of the lands was fixed by a survey, and they were capable of identification, Congress reserved absolute power over them; and if in exercising it the whole or any part of a sixteenth or thirty-sixth section had been disposed of, the State was to be compensated by other lands equal in quantity and as near as may be in quality. By this means the State was fully indemnified, the settlers ran no risk of losing the labor of years, and Congress was left free to legislate touching the national domain in any way it saw fit to promote the public interests.

Were these sections "reserved for public uses before the survey?" The claim of the State is that these

lands never constituted an Indian reservation, but remained simply unceded Indian country until the time of their cession and relinquishment under the act of 1889. This claim is clearly refuted by the recognition given to their status as an existing Indian reservation in the treaty of October 2, 1863; in the President's order of March 18, 1879, respecting the White Earth Reservation, and in the acts of January 14, 1889, and June 2, 1890, all of which preceded their survey. However, the existence or nonexistence of this reservation at or before the passage of the act of January 14, 1889, does not materially affect this controversy, because by that act and the agreement made with the Indians thereunder these lands were set apart and directed to be used in raising a fund to be employed in the support, education, and civilization of the Indians. The lands were at that time unsurveyed and could therefore be reserved by Congress for public uses. The words, "reserved for public uses," as they occur in the joint resolution, must be given a reasonable and not a constricted meaning, a meaning which would enable the Government to set apart unsurveyed lands for use as the site of a military post, or for use in raising a fund to be employed in equipping and maintaining a military post. The support, education, and civilization of the Indians is an obligation resting upon the Government, and whatever is employed in the discharge of that obligation is devoted to a public use. Lands which are set apart for the Indians, whether to be used as homes for them or in providing a fund with which to meet the expenses of their support, education, and civilization, are reserved for a public use within the meaning of the joint resolution.

The State's claim to sections 16 and 36 here in controversy is denied, and your office will recognize the

right of the proper authorities of the State to select other equivalent unappropriated public lands as indemnity, as provided by law.

REPORTS FOR 1872 AND 1873 OF BOARD APPOINTED TO VISIT RED LAKE RESERVATION UNDER ARTICLE VI OF TREATY OF OCTOBER 2, 1863.

MINNEAPOLIS, *October 18, 1872.*

SIR: I was also present in company with Rev. D. B. Knickerbocker and Rev. F. C. Coolbaugh at the Red Lake payment. Were about 1,100 of those Red Lakers who were the happy recipients of $8 apiece, together with the usual surplus paid to the chiefs; a doubtful custom in our opinion. The goods and supplies were given not to the bands as such, but to each family and individual; not only in due season, but due measure also, according to the need of each respectively. As a whole, the condition and prospects of the dwellers upon the borders of this beautiful lake are very much brighter than those of the poor Pembinas. They have comfortable houses, about 200. They have very fertile lands, and what is more, something of a disposition to till them; hundreds of acres under cultivation. They garner 6,000 bushels of shelled corn this present season. They increase in population—counting 50 births to 14 deaths for the current year. They have a sawmill and a gristmill; a school also, but desire yet greater things for their children—250 of them—and promise to donate $1,000 of their stumpage money, should they be so fortunate as to get it, for the purpose of establishing a high school. *All the persons residing on this Red Lake Reservation and under authority of law seem to be persons of*

excellent character and commendably faithful in all the duties with which they have been charged by Government.

Very respectfully, your obedient servant,

PRESCOTT FAY.

(Signed):

DAVID B. KNICKERBOCKER,
Rector of Gethsemene Church, Minneapolis.

F. C. COOLBAUGH,
Rector of St. John's, Mankato, Minn.

REPORT FOR 1873.

To the Hon. E. P. SMITH,
Commissioner of Indian Affairs,
Washington, D. C.

SIR: As members of the board of visitors to the Red Lake and Pembina Indians, acting under your instructions, we have visited the *Red Lake Reservation*, and having discharged the duties assigned us beg leave to report as follows:

The payment of annuities to the Red Lake Indians, in money and goods, was made on the 6th and 7th of October, by Special Agent Pratt, strictly in accordance with the terms of the treaty. We take pleasure in commending especially the systematic and impartial manner in which the payment was made. We were also impressed with the excellent judgment and energy of the agent manifested in the improvements now in progress at the agency. A favorable site has been selected for the permanent buildings of the agency and for the school farm; the land has been cleared, with the exception of a belt of timber left standing for the purpose of affording shelter from the lake winds; three substantial and commodious houses, well located, for the accommodation of the agent and

employees, are in process of erection, and preparations are perfected for the erection of a permanent school building the present season. The erection of these buildings marks a new era in the history of the work at this point, and will greatly increase its efficiency. The Government buildings hitherto in use have generally been utterly unworthy, and such as to render the residence of the families of the employees at the agency incompatible with health and comfort. We take pleasure in giving our hearty indorsement to the policy which considers and provides for the welfare of the employees of Government at these remote points.

A better class of employees can thus be secured, and worthy and much-needed examples of well-ordered homes can be set before the Indians. We were gratified at the manifest interest of the Indians in these improvements, and the confidence which the work in progress inspires that the Government will fulfill all its pledges to them.

It is worthy of notice that in the council held after the payment the Indians made no complaint respecting any of the employees. And so far as we could learn the character of the employees is such as to give no cause for complaint. The only request pressed upon the visitors by the Indians was that the boarding school might be speedily put in operation and a larger number of children taught.

While our inspection of the agency and the work on the reservation was, in general, highly satisfactory, we desire to call the attention of the Department to certain points in which, in our view, changes for the better can be made.

1. And first, the agency is greatly in need of a new warehouse. The building now in use is poorly located,

poorly constructed, and, in its present condition, affords no security for the Government stores placed in it.

2. We are assured by the miller that the mill in its present condition is inadequate for the demands of the agency. This is due mainly to the inferiority of the wheel, and we would recommend the substitution of a turbine wheel as early as possible.

3. The question of transportation is one of great importance. The present route via Brainerd and Leech Lake involves a wagon journey of nearly 150 miles in length, and the expenses of transportation are enormous. Two shorter routes to the railroad are suggested, the one to the crossing of the Red Lake River on the Pembina road, the other to Detroit on the N. P. R. R. via White Earth. We are informed that an appropriation has already been granted for the construction of a road to the former point. Recent surveys, however, go to show that in consequence of the swampy nature of the country the road can be constructed only at a cost greatly exceeding the appropriation granted. The road to the N. P. R. R. via White Earth can be constructed, it is believed, at much less expense, while the distance by this route will be increased only a few miles, and the rail transportation will be diminished nearly a hundred miles. Further, the fact that the Indians will be much less likely to come into contact with evil-disposed men and with whisky, if transportation is made by the way of White Earth, is an argument of weight in favor of a road to the Northern Pacific.

We therefore suggest the advisability of securing legislation authorizing the use of the appropriation for the construction of a road to the crossing of the Red Lake River in the construction of a road to the N. P. R. R., via White Earth, instead.

4. The difficulties constantly arising upon this and other reservations through the introduction of whisky, and the powerlessness of the agents to enforce laws and punish offenders, leads us to call attention to the importance of securing, for the agents of these distant reservations, at least, the powers of the United States marshal.

Respectfully submitted.

HENRY M. TENNEY,
JAMES H. BABBITT,
For the Board of Visitors.

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In the Supreme Court of the United States.

THE STATE OF MISSISSIPPI,

EUGAR AMOS STEPHENS, Secretary of the Interior, and HENRY CLAY EVANS, Commissioner of the General Land Office, } Appellees.

AGREED STATEMENT OF FACTS.

In the Supreme Court of the United States.

THE STATE OF MINNESOTA
v.
ETHAN ALLEN HITCHCOCK, SECRETARY of the Interior, and Binger Hermann, Commissioner of the General Land Office. } In equity.

AGREED STATEMENT OF FACTS.

It is hereby stipulated and agreed by and between the parties:

First. That the answer of the defendants fully describes the lands in controversy, and that the bill of complaint shall be given like effect as if it clearly described the lands in the manner in which they are set forth in said answer.

Second. That at the time of the filing of the bill of complaint a large portion of the lands so in controversy had been regularly surveyed by the properly constituted authorities of the United States; that the remaining portion of said lands have, since the filing of said bill of complaint, been so surveyed; that this suit may be heard and determined in like manner and with like effect in all respects as if all of said lands so in controversy had been so surveyed at the time of the filing of said bill of complaint, and as if such fact had been fully set forth in the bill, but this shall not detract from the allegation in the answer, now admitted,

that all of said lands remained unsurveyed until after the passage of the act of Congress of January 14, 1889, and until after the session of March 4, 1890, named in the answer,

Third. That except as its status may have been affected or changed by the treaty of October 2, 1863 (13 Stat., 667), by the President's order of March 18, 1879, enlarging what was then known as the White Earth Indian Reservation, by the act of Congress of January 14, 1889 (25 Stat., 642), or by the act of Congress of June 2, 1890 (26 Stat., 126), or by one or more of these, the district or country embracing the lands in controversy continued to be unceded Indian lands subject to the original right of occupancy of the Chippewa Indians up to the time of the action had on March 4, 1890, under the said act of January 14, 1889.

Fourth. That the letter of September 2, 1891, and the two letters of September 3, 1891, from Cushman K. Davis, a Senator in Congress from the State of Minnesota, to the Commissioner of the General Land Office, and the answer of the Commissioner of the General Land Office, dated September 9, 1891, referred to in the defendants' answer herein, are as follows:

WASHINGTON, D. C., *September 2, 1891.*

Honorable THOMAS H. CARTER,
Commissioner of the General Land Office.

MY DEAR SIR:

Respecting the disposition of the lands in the so-called Red Lake Indian Reservation in Minnesota, it is claimed by the State of Minnesota that that State is entitled to sections sixteen and thirty-six in every township, and where any part of said sections have been

sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be.

These lands were granted to the State of Minnesota by the act admitting it to the Union, approved Feb'y 26, 1857 (11 Stats., p. 166), by which it is provided:

"*First.* That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

As to the Red Lake Reservation, so called, it never was reserved by any Executive or legislative action. It remains in fact, or did until the legislation of 1889, as Indian country.

The treaty of 1864 (if I correctly remember the date) ceded to the United States a large tract of Indian country in Minnesota and Dakota, and left simply this Red Lake Reservation, so called, unceded, and it has since so remained until the legislation of 1889.

There will be found in the Federal Reporter of some twelve or fourteen years ago a decision by Judge McCreary of the Circuit Court of the United States for the district of Minnesota, the title of which, I think, is the United States *v.* Forty-two gallons of whisky, etc., sustaining the above proposition.

However this may be, while this land was unceded Indian country within the limits of the proposed State of Minnesota, Congress, by the act above cited, the United States specifically granted these sections to the State, whereby the State became vested with a present title, and any action taken by the Government thereafter of course can not divest it.

Very respectfully,

C. K. DAVIS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Sept. 3, 1891.*

Hon. THOMAS H. CARTER,
Com. Gen. Land Office.

MY DEAR SIR:

In connection with my letter written to you yesterday respecting the claims of the State of Minnesota to sections sixteen and thirty-six, school lands, I have the honor to refer you to the ruling of the Department in the case of the State of Kansas, Aug. 14, 1877, p. 1107, Vol. 2, Copp's Public Land Laws.

Yours truly,

C. K. DAVIS.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept. 3, 1891.*

Hon. THOMAS H. CARTER,
Com. Gen. Land Office.

MY DEAR SIR: As bearing upon the claim of the State of Minnesota to sect. 16 and 36 in Indian country or on Indian reservation, I refer you to Beecher *v.* Wetherby, 95 U. S., p. 517.

The Sup. Court distinctly holds, p. 523, *et seq.*:

1. That every sect. 16 (all that were granted in each township to Wisconsin) which had not been sold or otherwise disposed of should, as an unalterable condition of admission, be granted to the State for the use of schools.

2. It matters not whether the words of the compact are merely promissory or as operating as a transfer (of) the title to the State. In either case the section was appropriated to the State.

3. No subsequent law authorizing of it (i. e., a sale) could be construed to embrace "such lands." They could not be divested from their appropriation to the State.

4. The act of Congress, Feb'y 6, 1871, authorizing the sale of the township occupied by certain Indian tribes held to apply only to those portions which were outside sect. 16.

Yours truly,

C. K. DAVIS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September 9, 1891.*

Hon. C. K. DAVIS,
U. S. Senate, Washington, D. C.

SIR: I have the honor to acknowledge the receipt of your three letters of the 2d and 3d instant, respecting the condition of the grant to the State of Minnesota for school purposes, made by section 5 of the act of February 26, 1857 (11 U. S. Stat., 166), with reference to the lands embraced in the Red Lake Indian Reservation.

I am unable to determine from your said communications whether your question applies to the lands of which, under the provisions of the act of January 14, 1889 (25 U.S.Stat., 642), commissioners were appointed to secure the relinquishment of the Indian title, or to the lands within the Red Lake Reservation, which are excepted from the provisions of said act, and which, under the provisions thereof are to be allotted to the Indians of said tribe in severalty.

It is provided in section 3 of said act of January 14, 1889:

"That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section 1 of this act, all of the Chippewa Indians in the State of Minnesota, except those on Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reser-

vation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the others of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven * * *"

The question of the right of the several States to sections 16 and 36 in each township within the Indian reservation the title to which has been extinguished and the land surveyed, under the direction of the United States, has been decided affirmatively on more than one occasion, both by this Department and by the courts.

In a decision rendered by this office on August 14, 1877 (2 Copp's L. D., p. 1107, ed. 1882), which was approved by the Honorable Secretary of the Interior, upon the question of the right of the State of Kansas to sections 16 and 36 within Indian reservations in said State, the Commissioner said:

"I am forced to adopt the view that the Indian reservations were just as much a part of the State of Kansas, *in contemplation of the acts referred to*, granting school sections, as any other portion. It is true that the State could not take possession at once, or as it did of other lands, for the right of possession was in the Indians temporarily. The right of the State to claim the lands was made dependent upon certain conditions, or contingencies, which the acts referred to named. When these things were accomplished the State's right attached. The Indian reservations were excepted out of the boundaries of the State only so long as the Indian title remained unextinguished, and no longer. This title extinguished, the lands became part of the State, and when part of the State, the State was entitled to the 16th and 36th sections therein. The latter fact just as necessarily resulted as the former."

Other portions of this decision are equally emphatic

in declaring that upon the extinguishment of the Indian title and the survey of the lands, the right of the State to the school sections attached.

In the decision of the Honorable Secretary of the Interior involving the same question in the State of Colorado, dated December 6, 1887 (6 L. D., 412), it is stated:

"It is evidence from the very terms of the grant that Congress intended to grant to Colorado (and the same is true of other States), two sections for every township in the State to be taken of the sixteenth and thirty-sixth sections, where such sections at the time of survey have not been sold or otherwise disposed of, and where at the time of survey such sections have been sold or disposed of, then other lands equivalent thereto and as contiguous as may be are granted to said State in lieu of the sixteenth and thirty-sixth sections."

The Honorable Secretary said further:

"But even if the Indian title had not been extinguished at the date of the grant, it would not have prevented the grant from attaching at the date of survey, subject to the Indian right of occupancy, unless the section had prior to that time been sold or disposed of. If the specific section had been disposed of at the date of survey, the State would be entitled to indemnity under the express terms of the grant."

Concerning the indemnity clause of the grant, the Honorable Secretary in the same communication said:

"I think, however, the true theory of the school grant is this: That where the fee is in the United States at the date of the survey and the land is so encumbered that full and complete title and right of possession can not then vest in the State, the State may, if it so desires, elect to take equivalent lands in fulfillment of the compact, or it may wait until the title and right of possession unite in the Government and then satisfy its grant by taking the lands specifically granted."

The Honorable Secretary also cited a number of decisions by the courts as sustaining his view of the case.

The grants of school lands to the States of Kansas and Colorado are practically the same as the grant to the State of Minnesota.

The above decisions taken in connection with the act of February 28, 1891, amended sections 2275 and 2276 of the Revised Statutes, leaves no room for doubt that, under the provisions of the act of February 26, 1857, for the admission of the State of Minnesota into the Union, said State is entitled to the 16th and 36th sections in every township within the Indian reservations in said State, upon the extinguishment of the Indian title and the survey of the lands under the direction of the United States Government; and to indemnity for those sections within the unceded portions of said reservations, if the State shall elect to select such indemnity lands in preference to waiting for the Indian title to be extinguished in order that it may take those sections in place, in which event the selection of such indemnity lands by the State would be a waiver of the right to claim the said school sections in place.

Very respectfully,

THOS. H. CARTER,
Commissioner.

Fifth. That at the date of the admission of the State of Minnesota into the Union, approximately one-fourth of the total of the area thereof was unceded Indian lands, subject to the original right of occupancy by Indians.

Sixth. That upon the hearing of this cause either party shall be at liberty to refer to and read from any Indian treaty, any act or resolution of Congress or of the Territory or State of Minnesota, whether private or public, any publication made under the authority of Congress or either house

thereof, or of any executive department or bureau therein, including the pamphlet known as "Executive Orders relating to Indian Reserves," so far as the same may be relevant or material to this suit, or a proper matter for the court to consider in any aspect of this cause; and any such matter may be so referred to or read from with like effect as if it were herein fully set forth.

Seventh. That if in other respects the complainant is entitled to injunctive relief against the defendants herein, the action intended to be taken by the defendants at the time of the filing of the bill of complaint herein and still contemplated and threatened by them, as admitted in their answer, is of such a character as to justify a decree granting a permanent injunction.

Eighth. This cause may be heard upon the bill of complaint, answer, and this stipulation.

The parties hereby join in the earnest request that this cause be set down for hearing at the earliest practicable time.

FRANK B. KELLOGG,
W. B. DOUGLAS,
H. W. CHILDS,
Solicitors for Complainant.

WILLIS VAN DEVANTER,
Assistant Attorney General, Solicitor for Defendants.

Dated, *February 16, 1901.*

Supreme Court of the United States.

No. 4, Original.—October Term, 1901.

The State of Minnesota, Complainant, *vs.* Ethan Allen Hitchcock, Secretary of the Interior, and Binger Hermann, Commissioner of the General Land Office.	In Equity.

[May 5, 1902.]

This is a suit in equity, commenced in this court by the State of Minnesota to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from selling any sections 16 and 36 in what was on January 14, 1889, known as the Red Lake Indian reservation.

By the bill, answer and an agreed statement the following facts appear: By section 18 of the act to establish the territorial government of Minnesota, approved March 3, 1849, (9 Stat. 403,) it was enacted "that when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered 16 and 36 in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory and in the States and territories hereafter to be erected out of the same."

On February 26, 1856, the legislature of the Territory of Minnesota sent a memorial to Congress for the relief of settlers upon school lands, (Laws Minn. 1856, p. 368,) which reads:

"To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

"The memorial of the legislative assembly of the Territory of Minnesota respectfully represents:

"That under the provisions of the act of Congress, extending the provisions of the pre-emption law of 1841, over the unsurveyed lands of Minnesota, many of our settlers have heavy investments, both of money and labor, in the opening of farms, erection of buildings, and the laying out and improving of townsites, (lots in which said townsites were frequently transferred before the government survey, at high prices, to the occupants thereof,) who were found, when the government survey was made, to be upon the school sections, and that the said settler had no means of ascertaining previous to the survey where the school sections would come.

"That it is a great injustice and hardship to compel such persons to repurchase or lose entirely the improvements and homes, made by themselves in good faith, in the expectation of pre-empting or entering them accord-

ing to the provisions of the statute. Therefore, your memorialists would respectfully request your honorable body to pass an act, giving such persons in this territory as have, previously to the government survey, settled upon the school sections, (and have otherwise the right of pre-emption,) the right to pre-empt the same, as other government lands are pre-empted. And also providing for the entry of the townsites in this Territory, which are on school sections and were occupied as such, previous to the government survey, as other townsites upon unoffered government lands are entered.

"And also allowing the county commissioners of the county in which such lands may be situate to enter in lieu thereof, for the benefit of the school fund of the township in which such land so as aforesaid settled or occupied may be, and without charge, an equal amount of such surveyed lands, subject either to private entry or pre-emption, in the same land district as they may select.

"And as in duty bound your memorialists will ever pray."

In response to this memorial Congress passed the following joint resolution, March 3, 1857 (11 Stat. 254):

"That where any settlements, by the erection of a dwelling house or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas and Nebraska, and in the States and Territories hereafter to be erected out of the same) before the said sections shall have been or shall be surveyed; or when such sections have been or may be selected or occupied as townsites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, or reserved for public uses before the survey, then other lands shall be selected by the proper authorities, in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled 'An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.' And if such settler can bring himself, or herself, within the provisions of the act of fourth of September, eighteen hundred and forty-one, or the occupants of the townsite be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes."

On February 26, 1857, Congress passed an act authorizing the formation of a State government. (11 Stat. 166.) Section 5, so far as is applicable, is as follows:

"And be it further enacted, That the following propositions be, and the same are hereby, offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit:

"First, That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part

thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

On October 13, 1857, a constitution was formed, in which, by section 3 of article 2 the foregoing proposition was accepted in this language:

"The propositions contained in the act of Congress entitled 'An act to authorize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission into the Union on an equal footing with the original States,' are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to *bona fide* purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents."

By an act of date May 11, 1858, Minnesota was admitted into the Union. (11 Stat. 285.) In that it was recited "that the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

At the date of this admission a large part of the territory in the northwestern part of the State, including the tracts in controversy, was and for a long time thereafter remained unceded Indian lands, subject to the Indian title of occupancy. It was, among other things, stipulated in the agreed statement:

"That except as its status may have been affected or changed by the treaty of October 2, 1863, (13 Stat. 667,) by the President's order of March 18, 1879, enlarging what was then known as the White Earth Indian reservation, by the act of Congress of January 14, 1889, (25 Stat. 642,) or by the act of Congress of June 2, 1890, (26 Stat. 126,) or by one or more of these, the district or country embracing the lands in controversy continued to be unceded Indian lands subject to the original right of occupancy of the Chippewa Indians up to the time of the action had on March 4, 1890, under the said act of January 14, 1889."

Referring to the matter stated in this stipulation, it may be noticed that by the treaty of October 2, 1863, the Red Lake and Pembina bands of Chippewa Indians dwelling in northwestern Minnesota ceded lands within certain defined boundaries to the United States, and in article 6 of the treaty the portion of the territory occupied by them and not ceded is spoken of as a reservation, for by it the President was required to appoint a board of visitors, "whose duty it shall be to attend at all annuity payments of the said Chippewa Indians, to inspect their fields and other improvements, and to report annually thereon on or before the first day of November, and also as to the qualifications and moral deportment of all persons residing upon the reservation under the authority of law."

This tract was thereafter known as the Red Lake Indian reservation, and is referred to in the President's order of March 18, 1879, in which he bounds a proposed reservation on one side by the "Red Lake Indian reservation." The act of June 2, 1890, (26 Stat. 126,) grants to the Duluth and Winnipeg Railroad Company a right of way through the "Red Lake (and other) reservations." The second section of the act provides the mode of fixing the compensation to be paid the Indians for the right of way, and that no right of way shall vest in the company until, among other things, "the consent of the Indians on said reservation as to the amount of said compensation and right of way shall have been first obtained in a manner satisfactory to the President of the United States." On January 14, 1889, an act was passed, (25 Stat. 642,) providing for a commission to negotiate with all the bands or tribes of Chippewa Indians in Minnesota for the cession and relinquishment, "for the purposes and upon the terms" stated in the act, and subject to the approval of the President, "of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts."

That act directed that all the Chippewa Indians in Minnesota, "except those on the Red Lake reservation," were to be removed to and allotted lands in the White Earth reservation, and those on the Red Lake reservation were to be allotted lands on so much of that reservation as should be reserved by the commission for that purpose. The ceded lands were thereafter to be surveyed, inspected, classified as agricultural or pine lands, the latter appraised by 40-acre tracts and sold at vendue, and the agricultural lands disposed of to actual settlers at $1.25 per acre. The proceeds arising from the disposition of the two classes of land were to be held and applied as directed in section 7, which reads:

"That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares

per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: *Provided*, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live stock, teams, farming implements, and seed for such of the Indians, to the extent of their shares, as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess for all the advances of interest made as herein contemplated and other expenses hereunder."

Under this act a commission was appointed and an agreement made with the Indians for a cession of a large part of the Red Lake Indian reservation, which agreement was approved by the President, March 4, 1890, the unceded portion being reserved by the commissioners "for the purpose of making and filling the allotments" provided for in the act.

According to the agreed statement of facts the lands in the reservation were wholly unsurveyed at the time of the passage of this last act, January 14, 1889, and until after the approval of the agreement for this cession, March 4, 1890.

On February 28, 1891, (26 Stat. 796,) Congress passed this act:

"Where settlements with a view to pre-emption or homestead have been or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by pre-emption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is

entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however*, That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing."

Upon these facts the State contends that the territory in question was not an Indian reservation, but what is known as unceded Indian country, subject to the original right of occupancy by the Chippewa Indians, and also that whether the country was an Indian reservation or unceded Indian country it was subject to the grant of sections 16 and 36 to the State when the Indian right of occupancy was extinguished.

Defendants' contentions are:

1. That this tract of country was a reservation, set apart and appropriated to the uses of the civilization and support of the Indians.

2. That these lands never became "public lands," and so never became subject to the State's school land grant.

3. That the school land grant attached to no particular lands until surveyed. Until then the specific sections remained subject to disposition by Congress, the State, in the event of such disposition, being remitted to the selection of other lands as indemnity. Especially did the joint resolution of March 3, 1857, subject these sections in Minnesota to reservation for public uses at any time before survey, and, in the event of any such reservation, make the State's grant, to that extent, one of indemnity lands.

4. That the act of January 14, 1889, and the agreement negotiated thereunder with the Indians, dedicated and appropriated all the lands in the Red Lake reservation exclusively to the civilization, education and support of the Indians. This was a disposal of the lands within the meaning of the enabling act of February 26, 1857, and in any event was a reservation of them for public uses under the joint resolution of March 3, 1857.

5. That in interpreting the act of 1889, it is of no moment that the State has a system of common schools aided by a grant of lands from the general government. That act in terms keeps the education of these Indians under national control, and dedicates a portion of the proceeds of the sale of these lands "exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit."

6. That in determining whether the act of 1889 and the agreement negotiated thereunder were intended to appropriate sections 16 and 36, along with the other lands, to the civilization, education and support of the Indians, inquiry must be made as to how the act and agreement were understood by the Indians.

Mr Justice BREWER delivered the opinion of the Court.

A preliminary question is one of jurisdiction. It is true counsel for defendants did not raise the question, and evidently both parties desire that the court should ignore it and dispose of the case on the merits. But the silence of counsel does not waive the question, nor would the express consent of the parties give to this court a jurisdiction which was not warranted by the Constitution and laws. It is the duty of every court of its own motion to inquire into the matter irrespective of the wishes of the parties, and be careful that it exercises no powers save those conferred by law. Consent may waive an objection so far as respects the person, but it cannot invest a court with a jurisdiction which it does not by law possess over the subject matter. The question having been suggested by the court, a brief has been presented, and our jurisdiction sought to be sustained on several grounds. The question is one of the original and not of the appellate jurisdiction. The pertinent constitutional provisions are found in section 2 of article III, as follows:

"The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original juridiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The first of these paragraphs defines the matters to which the judicial power of the United States extends, and the second divides the original and appellate jurisdiction of this court. By the latter paragraph this court is given original jurisdiction of those cases "in which a State shall be party." This paragraph, distributing the original and appellate jurisdiction of this court, is not to be taken as enlarging the judicial power of the United States or adding to the cases or matters to which by the first paragraph the judicial power is declared to extend. The question is, therefore, not finally settled by the fact that the State of Minnesota is a party to this litigation. It must also appear that the case is one to which by the first paragraph the judicial power of the United States extends. There are three clauses in the first paragraph which call for notice; one, that which extends the judicial power of the United States to controversies "between a State and citizens of another State;" second, that which extends it "to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;" and, third, that which extends it to controversies "to which the United States shall be a party." To bring the case within the first clause referred to, the bill alleges that the defendant, Ethan Allen Hitchcock, Secretary of the Interior, is a citizen of Missouri, and the defendant, Binger Herman, Commissioner of the General Land Office, a citizen of Oregon, and therefore it is said the case comes strictly within the language of the first paragraph in that there is presented a controversy between a State, Minnesota, and citizens of other States. To that it may be replied that there is no real controversy between the State, the plaintiff, and the defendants as individuals; that the latter, merely as citizens, have no interest in the controversy for or against the plaintiff; that in case either of the defendants should die or resign and a citizen of Minnesota be appointed in his place, the jurisdiction of the court would cease, and this although the real parties in interest remain the same. In respect to the second it may be said that if it were held that this court had original jurisdiction of every case of a justiciable nature in which a State was a party and in which was presented some question arising under the Constitution, laws of the United States, or treaties made under their authority, many cases, both of a legal and an equitable nature, in respect to which Congress has provided no suitable procedure, would be brought within its cognizance. To this it may be replied that this court cannot deny its jurisdiction in a case to which it is extended by the Constitution. As to the third, it may be objected that the United States is not in terms a party to the litigation and has no pecuniary interest in the controversy, it being in reality one between the State and the Indians.

We omit, as unnecessary to the disposition of this case, any consideration of the applicability of the first two clauses, because we think the case comes

within the scope of the third clause, and we need not now go farther. This is a controversy to which the United States may be regarded as a party. It is one, therefore, to which the judicial power of the United States extends. It is, of course, under that clause a matter of indifference whether the United States is a party plaintiff or defendant. It could not fairly be adjudged that the judicial power of the United States extends to those cases in which the United States is a party plaintiff and does not extend to those cases in which it is a party defendant.

The case of *United States* v. *Texas*, (143 U. S. 621,) is in point, and upon many aspects of the question very suggestive. That was a suit brought by the United States against the State of Texas to determine the title to a tract, called the county of Greer, which was claimed by the State to be within its limits and a part of its territory, and by the United States to be outside the State of Texas and belonging to the United States. The jurisdiction of this court was challenged, but was sustained. After referring to the provisions of the Constitution and the judiciary act of 1789, Mr. Justice Harlan, speaking for the court, said:

"The words in the Constitution, 'in all cases . . . in which a State shall be a party, the Supreme Court shall have original jurisdiction,' necessarily refer to all cases mentioned in the preceding clause in which a State may be made, of right, a party defendant, or in which a State may, of right, be a party plaintiff.

* * * * * *

"It is, however, said that the words last quoted refer only to suits in which a State is a party, and in which, also, the opposite party is another State of the Union or a foreign State. This cannot be correct, for it must be conceded that a State can bring an original suit in this court against a citizen of another State. (*Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 287.) Besides, unless a State is exempt altogether from suit by the United States, we do not perceive upon what sound rule of construction suits brought by the United States in this court—especially if they be suits the correct decision of which depends upon the Constitution, laws or treaties of the United States—are to be excluded from its original jurisdiction as defined by the Constitution. That instrument extends the judicial power of the United States 'to *all* cases,' in law and equity, arising under the Constitution, laws and treaties of the United States, and to controversies in which the United States shall be a party, and confers upon this court original jurisdiction 'in *all* cases' 'in which a State shall be party,' that is, in all cases mentioned in the preceding clause in which a State may, of right, be made a party defendant, as well as in all cases in which a State may, of right, institute a suit in a court of the United States. The present case is of the former class. We cannot assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign States, intended to exempt a State altogether from suit by the general government. They could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the perma-

nence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law. And to what tribunal could a trust so momentous be more appropriately committed than to that which the people of the United States, in order to form a more perfect Union, establish justice and insure domestic tranquility, have constituted with authority to speak for all the people and all the States, upon questions before it to which the judicial power of the nation extends? It would be difficult to suggest any reason why this court should have jurisdiction to determine questions of boundary between two or more States, but not jurisdiction of controversies of like character between the United States and a State." (p. 643.)

While the United States as a government may not be sued without its consent, yet with its consent it may be sued, and the judicial power of the United States extends to such a controversy. Indeed, the whole jurisdiction of the Court of Claims rests upon this proposition.

It may be said that the United States is not named as defendant, and therefore it cannot be considered a party to the controversy. It is true that it was at one time held that the Eleventh Amendment to the Constitution of the United States, which provides that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State," was applicable only to cases in which the State was named in the record as a party defendant. (*Osborn* v. *United States Bank*, 9 Wheat. 738.) But later rulings have modified that decision, and held that the amendment applies to any suit brought in name against an officer of the State, when "the State, though not named, is the real party against which the relief is asked, and the judgment will operate." (*In re Ayers*, 123 U. S. 443.) Of course, this statement has no reference to and does not include those cases in which officers of the United States are sued, in appropriate form, to compel them to perform some ministerial duty imposed upon them by law, and which they wrongfully neglect or refuse to perform. Such suits would not be deemed suits against the United States within the rule that the government cannot be sued except by its consent, nor within the rule established in the Ayers case.

Now, the legal title to these lands is in the United States. The officers named as defendants have no interest in the lands or the proceeds thereof. The United States is proposing to sell them. This suit seeks to restrain the United States from such sale, to divest the government of its title and vest it in the State. The United States is, therefore, the real party affected by the judgment and against which in fact it will operate, and the officers have no pecuniary interest in the matter. If whether a suit is one against a State is to be determined, not by the fact of the party named as defendant on the record, but by the result of the judgment or decree which may be entered, the same rule must apply to the United States.

The question whether the United States is a party to a controversy is not determined by the merely nominal party on the record but by the question of the effect of the judgment or decree which can be entered.

But, it may be said, that the United States has no substantial interest in the lands; that it holds the legal title under a contract with the Indians and in trust for their benefit. This is undoubtedly true, and if the case stood alone upon the construction of the treaty between the United States and the Indians there might be substantial force in this suggestion. But Congress has, for the government, assumed a personal responsibility. On March 2, 1901, it passed the following act:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in any suit heretofore or hereafter instituted in the Supreme Court of the United States to determine the right of a State to what are commonly known as school lands within any Indian reservation or any Indian cession where an Indian tribe claims any right to or interest in the lands in controversy, or in the disposition thereof by the United States, the right of such State may be fully tested and determined without making the Indian tribe, or any portion thereof, a party to the suit, if the Secretary of the Interior is made a party thereto; and the duty of representing and defending the right or interest of the Indian tribe, or any portion thereof, in the matter shall devolve upon the Attorney General upon the request of such Secretary." (31 Stat. 950.)

It has by this legislation in effect declared that the Indians, although the real parties in interest, need not be made parties to the suit; that the United States will, for the purposes of the litigation, stand as the real party in interest, and so far as it could within constitutional limits has expressed the consent of the government to the maintenance of this suit in this court. By the act it, in effect, declares that it waives all objections on the ground that it is a mere trustee; that it assumes the full responsibilities of ownership, and that it will, whatever may be the outcome of any litigation, stand responsible to the Indians for the full value of the lands in controversy. Can the court say that the United States may not assume such responsibility; may not waive all objections on account of the mere matter of trusteeship, and stand in court as the responsible owner, against whom all litigation may be directed? If it stands as such owner, then within the proposition heretofore referred to a suit which is against its agents, not affecting them individually, but affecting only its title to the real estate, is in substance and effect a suit against the United States. The controversy is made by the act of 1901 one to which the United States is a party in interest, to be directly affected by the result, and, therefore, the case is within the first paragraph, as one to which the judicial power of the United States extends.

Our conclusion, therefore, is that the original jurisdiction vested by the Constitution in this court over controversies in which a State is a party is not affected by the question whether the State is party plaintiff or party

defendant, that a dispute as to the title to real estate is a question of a justiciable nature, and can properly be determined in a judicial proceeding; and that the United States is to be taken, for the purposes of this case, as the real party in interest adverse to the State. We are of opinion, therefore, that this court has jurisdiction of this controversy, and is called upon to determine the case upon its merits.

We pass, therefore, to a consideration of such merits.

Whether this tract, which was known as the Red Lake Indian reservation, was properly called a reservation, as the defendant contends, or unceded Indian country, as the plaintiff insists, is a matter of little moment. Confessedly the fee of the land was in the United States, subject to a right of occupancy by the Indians. That fee the government might convey, and whenever the Indian right of occupancy was terminated (if such termination was absolute and unconditional) the grantee of the fee would acquire a perfect and unburdened title and right of possession. At the same time, the Indians' right of occupancy has always been held to be sacred; something not to be taken from him except by his consent, and then upon such consideration as should be agreed upon.

It is true that in the third division of the agreed statement there is a stipulation that the territory embraced within the so-called Red Lake Indian reservation remained unceded Indian lands, up to the action had on March 4, 1890, unless its status was affected by certain matters named. Doubtless its status, if by that is meant simply the character of the title, was not affected by those matters. While its boundaries were indicated, while it was called the Red Lake Indian reservation, yet the acts referred to did not purport to change the rights of the Indians or the government, neither did they in fact change them. The land remained on March 4, 1890, land the fee of which was in the United States, but subject to the Chippewa Indians' right of occupancy. No patent had ever been executed by the United States to the Indians in severalty or to the tribe at large. The mere calling of the tract a reservation instead of unceded Indian lands did not change the title. It was simply a convenient way of designating the tract.

Yet if it was necessary to determine the question we should have little doubt that this was a reservation within the accepted meaning of the term. Prior to the treaty of October 2, 1863, the boundaries of the lands occupied by the Chippewa Indians had been defined by sundry treaties, and by that treaty a large portion of the lands thus occupied were ceded by the Indians; that is, the Indians ceded to the United States all their interest and right of possession. While there was no formal action in respect to the remaining tract, the effect was to leave the Indians in a distinct tract reserved for their occupation, and in the same act this tract was spoken of as a reservation. Now, in order to create a reservation it is not

necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been done there results a certain defined tract appropriated to certain purposes. Here the Indian occupation was confined by the treaty to a certain specified tract. That became, in effect, an Indian reservation. *Spalding* v. *Chandler*, (160 U. S. 394,) is in point. There, as here, was presented the question of the origin of a reservation, and in respect thereto it was said (pp. 403, 404):

"It is not necessary to determine how the reservation of the particular tract, subsequently known as the 'Indian reserve,' came to be made. It is clearly inferable from the evidence contained in the record that at the time of the making of the treaty of June 16, 1820, the Chippewa tribe of Indians were in the actual occupation and use of this Indian reserve as an encampment for the pursuit of fishing. . . . But whether the Indians simply continued to encamp where they had been accustomed to prior to making the treaty of 1820, whether a selection of the tract, afterwards known as the Indian reserve, was made by the Indians subsequent to the making of the treaty and acquiesced in by the United States government, or whether the selection was made by the government and acquiesced in by the Indians, is immaterial. . . . If the reservation was free from objection by the government, it was as effectual as though the particular tract to be used was specifically designated by boundaries in the treaty itself. The reservation thus created stood precisely in the same category as other Indian reservations, whether established for general or limited uses, and whether made by the direct authority of Congress in the ratification of a treaty or indirectly through the medium of a duly authorized executive officer."

Turning to the legislation of Congress in respect to school lands in Minnesota, the clause in the act establishing the territorial government has only this significance. It provided that when the lands in the territory should be surveyed sections Nos. 16 and 36 "shall be and the same are hereby reserved," for the purpose of being applied to schools. But the agreed statement shows that these lands were not surveyed until after the act of January 14, 1889, and the agreement with the Indians made in pursuance thereof, and approved by the President, March 4, 1900. Further, the State had been admitted into the Union, and the rights of the State are to be determined by the act of admission rather than by any prior declaration by Congress of its purpose in respect to certain lands. The act of admission provided:

"That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections or any part thereof has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

It will be perceived that this grant was of "public lands." It was held in *Newhall* v. *Sanger*, (92 U. S. 761, 763,) that—

"The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws."

In *Leavenworth &c. Railroad Co.* v. *United States,* (92 U. S. 733, 741,) speaking of a grant to the State of Kansas in aid of the construction of a railway, as affecting lands within an Indian reservation, it was said:

"But did Congress intend that it should reach these lands? Its general terms neither include nor exclude them. Every alternate section designated by odd numbers, within certain defined limits, is granted; but only the public lands owned absolutely by the United States are subject to survey and division into sections, and to them alone this grant is applicable. It embraces such as could be sold and enjoyed, and not those which the Indians, pursuant to treaty stipulations, were left free to occupy."

In *Missouri, Kansas & Texas Railway Co.* v. *Roberts,* (152 U. S. 114, 119,) are these words, referring to the reservation of sections 16 and 36 to Kansas as school lands:

"If the reservation named was intended as a grant of the sections sixteen (16) and thirty-six (36) to the territory and to the States to be created out of them, or as a dedication of them for schools, it could only apply to such lands as were public lands, for no other lands in our land system are subdivided into sections, nor could it embrace lands which had been set apart and reserved by statute or treaty with them for the use of the Indians, as was the case with the lands involved in this controversy, as we have already shown."

See also *Doolan* v. *Carr,* (125 U. S. 618, 632;) *Bardon* v. *Northern Pacific Railroad Co.,* (145 U. S. 535, 538;) *Mann* v. *Tacoma Land Co.,* (153 U. S. 273, 284;) *Barker* v. *Harvey,* (181 U. S. 481, 490.)

Again, the language of the section does not imply a grant *in præsenti.* It is "*shall* be granted." Doubtless under that promise whenever lands became public lands they came within the scope of the grant. As said in *Beecher* v. *Wetherby,* (95 U. S. 517, 523,) with reference to a similar clause in the act for the admission of Wisconsin into the Union:

"It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section sixteen (16) in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title to the State upon her acceptance of the propositions as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially excepted."

And again, in *United States* v. *Thomas,* (151 U. S. 577, 583):

"Mr. Justice Lamar, while Secretary of the Interior, had frequent occasion to consider the nature and effect of the grant of school lands, where the title was at all encumbered or doubtful; and on this subject he said (6 L. Dec. 418)

that the true theory was this: 'That where the fee is in the United States at the date of survey, and the land is so encumbered that full and complete title and right of possession cannot then vest in the State, the State may, if it so desires, elect to take equivalent lands in fulfillment of the compact, or it may wait until the right and title of possession unite in the government, and then satisfy its grant by taking the lands specifically granted.' And this view he considered 'as fully sustained by the decisions of the courts and the opinions of the Attorneys General,' and cited in support of it *Cooper* v. *Roberts*, (18 How. 173;) 3 Opins. 56; 8 Opins. 255; 9 Opins. 346; 16 Opins. 430; *Ham* v. *Missouri*, (18 How. 126.)"

So also in *Cooper* v. *Roberts*, (18 How. 173, 179,) the question presented was whether certain mineral lands were excepted from the grant of school lands to the State. The words of the school land grant were, as here, "shall be granted," and it was said:

"We agree, that until the survey of the township and the designation of the specific section, the right of the State rests in compact—binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object, upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title. The *jus ad rem* by the performance of that executive act becomes a *jus in re*, judicial in its nature, and under the cognizance and protection of the judicial authorities, as well as the others. (*Gaines* v. *Nicholson*, 9 How. 356.")

But while this is true it is also true that Congress does not, by the section making the school land grant, either in letter or spirit, bind itself to remove all burdens which may rest upon lands belonging to the government within the State, or to transform all from their existing status to that of public lands, strictly so called, in order that the school grant may operate upon the sections named. It is, of course, to be presumed that Congress will act in good faith; that it will not attempt to impair the scope of the school grant; that it intends that the State shall receive the particular sections or their equivalent in aid of its public school system. But considerations may arise which will justify an appropriation of a body of lands within the State to other purposes, and if those lands have never become public lands the power of Congress to deal with them is not restricted by the school grant, and the State must seek relief in the clause which gives it equivalent sections. If, for instance, Congress in its judgment believes that within the limits of an Indian reservation or unceded Indian country—that is, within a tract which is not strictly public lands—certain lands should be set apart for a public park, or as a reservation for military purposes, or for any other public uses, it has the power notwithstanding the provisions of the school grant section. So it is that when Congress came in 1889 to make provision for this body of lands it could have by treaty taken simply a cession of the Indian rights of occupancy, and thereupon the lands

would have become public lands and within the scope of the school grant. But it also had the power to make arrangements with the Indians by which the entire tract would be otherwise appropriated.

What was in fact done? The act of January 14, 1889, provided for a commission to negotiate for the cession and relinquishment of "all and so much of" the White Earth and Red Lake reservations as in the judgment of the commission should not be required to satisfy the allotments required by the existing acts, the cession to be "for the purposes and upon the terms hereinafter stated." The allotments referred to were allotments in severalty, made in conformity to the provisions of the act of February 8, 1887. (24 Stat. 388.) The ceded lands were to be divided into two classes; one appraised and sold at auction and the other disposed of to actual settlers at $1.25 per acre. The proceeds of these sales were to be placed in the Treasury of the United States as a permanent fund to the credit of the Indians, drawing interest at five per centum for fifty years, the interest to be expended, three-fourths paid in cash to the Indians severally and the remaining one-fourth devoted, under the direction of the Secretary of the Interior, "exclusively to the establishment and maintenance of a system of free schools among said Indians in their midst and for their benefit." The cession was not to the United States absolutely, but in trust. It was a cession of all of the unallotted lands. The trust was to be executed by the sale of the ceded lands and a deposit of the proceeds in the Treasury of the United States to the credit of the Indians, such sum to draw interest at five per cent, and one-fourth of the interest to be devoted exclusively to the maintenance of free schools among the Indians and for their benefit.

Now it is contended that this legislation, though dealing with, in terms, all the unallotted lands, is subordinated to the prior promise of the government to grant sections 16 and 36 to the State for school purposes. In other words, the cession and relinquishment by the Indians, it is said, extend to all the unallotted lands, but that cession and relinquishment having been accomplished, the trust which by the same legislation is created in respect to the same lands is limited, and restricted by the prior promise of the government, and this notwithstanding the fact that the government had provided that the State might take other lands, in case any particular sections 16 and 36 had become appropriated to other public uses. We are not disposed to belittle this contention. The arguments in favor of it, both those founded on technical rules of statutory construction and those based upon the long-established policies of the government in respect to both the Indians and the public schools, are presented by counsel for the State with exceeding force and ability. Notwithstanding this, we are constrained to believe that not only the technical rules of statutory construction, but also the general scope of the legislation in these matters, and the policy of

the United States in respect to public schools, and also to Indians, as the wards of government, concur in sustaining the contention of the government that none of these ceded lands passed under the school grant to the State.

And first, in reference to technical rules of statutory construction. The cession was, as we have seen, of all the unallotted lands, and the cession was of those lands "for the purposes and upon the terms hereinafter stated." It was a distinct conveyance by the Indians of certain lands for a named purpose. Now if the United States, the recipient of this cession, was competent to carry into execution the expressed purposes, does it not follow that the cession subjected all the lands to them? Can it be said that the Indians, making the cession, for a moment supposed that the lands ceded were not to be used for the purposes named, and if the language carries upon its face one obvious meaning, and would naturally be so understood by the Indians, that construction within all the rules respecting Indian treaties must be enforced. As said in *Worcester* v. *The State of Georgia*, (6 Pet. 515, 582):

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word 'allotted,' in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

And in *Choctaw Nation* v. *United States*, (119 U. S. 1, 28):

"The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons equally subject to the same laws."

But reliance is placed upon the doctrine that a later general statute does not repeal by implication a prior special statute unless there is an absolute incompatibility between the two, and the earlier will remain as an exception to the later. It is said that here the earlier statute was a special grant or promise to grant two particular sections in each township; the later a general statute in respect to all of a large body of lands. There

is no necessary incompatibility between the two, and the earlier should be taken as an exception to the later and the later held applicable to all the lands except the specially named sections. *Beecher* v. *Wetherby*, *supra*, is referred to as an illustration of the doctrine and in point in reference to school lands. But in that case the cession from the Indians was not subject to any trust. The facts were these: The action was replevin to recover logs cut upon a particular section, and the title to the logs depended on the title to the land. The Wisconsin school grant, in 1846, though of only section 16, was in form similar to that to Minnesota, and the defendant claimed under that grant. A treaty had been concluded with the Menomonees, February 8, 1831, containing a provision that two specified townships should be set apart for the use of the Stockbridge and Munsee Indians. In these townships was the section 16 in controversy. By treaty, ratified January 23, 1849, the Menomonees, in consideration of the sum of $350,000 and a reservation west of the Mississippi, agreed to cede all their lands in Wisconsin. The eighth article of the treaty stipulated that they should be permitted to remain on the ceded lands for two years and until notified by the President that the lands were wanted. By treaty of May 12, 1854, this proposed reservation west of the Mississippi River was retroceded by the Indians to the United States, and in consideration of such cession the United States agreed to give them a home, "to be held as Indian lands are held," upon Wolf River, in Wisconsin, which tract included the townships set apart for the benefit of the Stockbridge and Munsee Indians. On February 6, 1871, Congress passed an act for the sale of these two townships, except eighteen contiguous sections thereof, and the appropriation of the proceeds for the benefit of the Stockbridge and Munsee Indians, and in pursuance of that act the United States sold the land in controversy to the plaintiff. The court held that the title of the defendant under the school grant was superior to that of the plaintiff under the sale by the United States. Two facts are apparent: First, the Menomonee Indians in the first instance received a cash and real estate consideration for the large reservation which they conveyed to the United States; second, that while thereafter a tract was ceded to them to be held as Indian lands are held—a tract which included the section in controversy—and while by an earlier treaty with the Menomonees two townships of such tract (including this particular section 16) had been set apart for the use and benefit of the Stockbridge and Munsee Indians, yet there appears no treaty or agreement with either the Menomonee or Stockbridge or Munsee Indians in reference to the sale of these two townships. Yet, as stated by the court, "when the logs in suit were cut, those tribes had removed from the land in controversy, and other sections had been set apart for their occupation." The ruling was that the United States held the fee, subject only to the Indian right of occupancy; that by the school land section in the

enabling act there was a grant, or promise to grant,—in either event to be taken as an appropriation of the fee to the State, subject to the Indian right of occupancy; that the Indians had removed from the lands and had received other lands for their occupation; that hence all Indian rights had ceased. The court, quoting in its opinion from *United States* v. *Cook* (19 Wall. 591,) said (p. 526): "The right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians attaches itself to the fee without further grant."

Hence, applying the doctrine in respect to earlier special and later general statutes, the government having received from the Indians their right of occupancy, without any stipulation or agreement or trust in respect thereto, it was held that the act providing for the sale of the two townships could not have been intended to authorize a sale of specific sections therein which had been already conveyed or promised to the State. But this case stands on entirely different grounds. Before any survey of the lands, before the State right had attached to any particular sections, the United States made a treaty or agreement with the Indians, by which they accepted a cession of the entire tract under a trust for its disposition in a particular way. The question is not as to the construction of two separate statutes, but as to the scope and effect to be given to a treaty or agreement with the Indians, and whether it is to be narrowed in its scope by any rules applicable to the construction of statutes—rules with which it is not to be supposed the Indians were familiar.

Buttz v. *Northern Pacific Railroad*, (119 U. S. 55,) is also referred to. In that case the controversy was in respect to a tract of land within the place limits of the grant to the Northern Pacific Railroad Company, (13 Stat. 365,) and which at the time of the filing of the map of definite location was within the limits of an Indian reservation. By the second section of the granting act it was provided that "the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this act, and acquired in the donation to the (road) named in this bill." In 1872 the United States entered into a treaty with the Indians, by which for a cash consideration so much of the reservation as covered the land in controversy was ceded to the United States. It was held that by the original act the fee which was in the United States passed to the railroad company, subject to the Indian right of occupancy, which was afterwards, in pursuance of the promise to the company in the granting act, extinguished for a cash consideration, and immediately there was vested in the company a title paramount to that of one attempting a preemption. Here then, as in the prior case, the cession by the Indians was subject to no trust or condition, and the question was simply as to the effect to be given to various statutes.

Heydenfeldt v. *Daney Gold & Silver Mining Company*, (93 U. S. 634,) while not involving any question of Indian rights, is worthy of notice, as affecting a State's claim to school lands. The Nevada enabling act, approved March 21, 1864, (13 Stat. 30, 32,) contained this provision: "That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby, granted to said State for the support of common schools." The plaintiff claimed title by conveyance from the State of a part of a section sixteen. The defendant rested upon a mineral patent from the United States, his entry upon the lands having been prior to any survey, and in conformity to the miners' laws, customs and usages of the district. Although the terms of the school land section were terms of present grant, and although the entry by the defendant was after the State had been admitted, yet his title was adjudged superior to that obtained from the State, the court holding that the United States had full power to dispose of the land until after a survey and the identification thereby.

Again, it is well to bear in mind the joint resolution passed by Congress on March 3, 1857, a resolution which was prompted by a memorial from the legislature of the territory of Minnesota, and which, recognizing the possibility of settlements or townsite entries before the public surveys on lands which by such surveys were afterwards found to be school sections, provided that when any such sections should be occupied by settlers or selected as townsites "or reserved for public uses before the survey," then other lands might be selected in lieu thereof. That the sale of the ceded lands for the purpose of creating a fund for the benefit of the Indians was a use of them for a public purpose, cannot be doubted. But the contention of counsel for the State is "that the public uses which were intended to operate as an appropriation prior to the services were uses to which the land itself might be put or employed for governmental uses." It is unnecessary to rest upon a determination of this question. We refer to the resolution as an express declaration by Congress that the school sections were not granted to the State absolutely and beyond any further control by Congress, or any further action under the general land laws. As in *Heydenfeldt* v. *Daney Gold & Silver Mining Co.*, *supra*, priority was given to a mining entry over the State's school right, so here, in terms, preference is given to private entries, townsite entries, or reservations for public uses. In other words, the act of admission with its clause in respect to school lands was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections were or should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was recognized,

and provision made for a selection of other lands in lieu thereof. In this connection may also be noticed the act of February 28, 1891, although passed after the approval of the agreement for the cession of these lands by the Indians. That act in terms authorized the selection of other lands "where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States."

We come finally to a consideration of the policy of the government both in respect to schools and to Indians. It is undoubtedly true that such policy from the beginning has been liberal in the appropriation of lands for school purposes. See a review of the legislation in respect thereto in the opinion in *Cooper* v. *Roberts*, *supra*.

It is not to be supposed that Congress intended any departure from this policy in its legislation in respect to lands within Minnesota, and the courts are justified in any fair construction of such legislation as will secure to the State its full quota of lands for aid in the development of its public school system. It is also true that much of the legislation in respect to Indians and many of the treaties with them have contemplated simply the cession of their lands and their removal to tracts further west. In such cases, where there has been simply a cession by the Indian tribe of its reservation and a removal to some new territory, it is not strange that the school grants have been generally held operative in the ceded reservations. The interests of public schools have always been considered paramount to those of railroad companies in grants made to aid in their construction. The one speaks for intellectual; the other for material development. Of course, when the Indian tribe has been removed by treaty from one body of land to another the interest of the tribe in the land from which it has been removed ceases and the full obligation of the government to the Indians is satisfied when the pecuniary or real estate consideration for the cession is secured to them. But in some instances, and this is one of them, the Indians have not been removed from one reservation to another, but the government has proceeded upon the theory that the time has come when efforts shall be made to civilize and fit them for citizenship. Allotments are made in severalty, and something attempted more than provision for the material wants of the Indians. In construing provisions designed for their education and civilization as fully if not more than in construing provisions for their material wants, is it a duty to secure to the Indians all that by any fair construction of treaty or statute can be held to have been understood by them or intended by Congress. Instead of removing these Chippewa Indians from Minnesota, the purpose of the legislation and agreement was to fit them for citizenship by allotting them lands in severalty and providing a system of public schools. Surely it could not have been understood by the Indians that only part of

the lands they ceded were to be used for these purposes. They were dealing with the tract as an entirety, and they had a right to expect that the entire tract would be used as declared in the act and agreement. No provision is made for compensating the Indians for lands which would be lost if the right of the State was sustained, whereas, on the other hand, the right of the State to compensation for the particular school sections within the tract had already been secured. Contrasting the two policies—that in respect to public schools and that in respect to the care of the Indians—it would seem that we are called upon to uphold the rights of the Indians, which otherwise would be wholly lost without compensation as against the claims of the State for which satisfaction in other directions has been provided.

For these reasons we are of opinion that the claim of Minnesota to these lands cannot be sustained, and a decree will be entered in favor of the defendants dismissing the bill.

Mr. Justice GRAY did not hear the argument, and took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.